

24.1 General Discussion

Since this manual outlines the federal procedures that a local agency must follow for a Federal Highway Administration (FHWA) funded project, only compliance with the National Environmental Policy Act (NEPA) will be described in detail. If a local agency needs assistance in determining the environmental classification of a project, they are encouraged to contact the Region Local Programs Engineer to arrange for a field review of the proposed project. Also, a local agency should be aware of the following State Environmental Policy Act (SEPA) requirements:

- All projects, regardless of the funding source, must comply with: SEPA of 1971 as supplemented in 1983, RCW 43.21C; “SEPA Rules,” WAC 197-11, and local ordinances; Section 9 of the Endangered Species Act of 1973 (ESA) and Section 4, Part (d) of the ESA; Section 106 of the National Historic Preservation Act of 1966 (NHPA).
- While Environmental Impact Statement (EIS) documentation that meets NEPA requirements usually satisfies SEPA requirements, SEPA documents do not necessarily satisfy NEPA requirements.
- A SEPA checklist may be required if right-of-way or state permits are required for a Class II, NEPA — Categorical Exclusion (CE) project.
- Since not all NEPA CEs are SEPA Categorical Exemptions, these projects may need environmental approval both as a NEPA CE and as a SEPA Determination of Non-Significance (DNS).
- No EIS is required when a NEPA Environmental Assessment (EA) supports a NEPA Finding of No Significant Impact (FONSI) or when a SEPA checklist supports a SEPA DNS.
- When the NEPA EA or EIS is developed in coordination with state and local agency requirements, the document and its appropriate review and processing may be adopted to satisfy SEPA requirements in accordance with WAC 197-11-610.
- The Adoption Notice, WAC 197-11-965, is filled out by the local agency and circulated to the Department of Ecology (DOE), to agencies with jurisdiction, and to persons or organizations who have responded to the proposal in writing.

When the project involves federal funds or federal permits, its environmental requirements are governed by:

- NEPA of 1969, 42-USC-4321 et seq.
- Council on Environmental Quality Regulations for Implementing NEPA, 40 CFR, Parts 1500, et seq.

- Federal Highway Administration — Federal Transit Administration, 23 CFR, Part 771.
- Environmental Impact and Related Procedures, 49 CFR, Part 622.
- Section 7 of the ESA, 50 CFR, Part 402 and Section 4, Part (d) of the ESA.
- Section 106 of the NHPA, 36 CFR, Part 800.

This manual and the Washington State Department of Transportation’s (WSDOT) *Environmental Procedures Manual* (M 31-11) should be used to conduct the environmental evaluation.

Environmental evaluation starts with project classification which is normally the initial step in project development. A project will fall into one of three defined classes, depending on the extent of its impacts. The three classes are defined in Section 24.2.

Federal regulations require the use of an interdisciplinary approach to assess a project’s social, economic, and environmental impacts. “Interdisciplinary” means integrated consideration of the project’s aspects through such disciplines as biology, economics, geology, sociology, urban planning, archeology, communications, and acoustics in addition to traditional civil engineering expertise. Interdisciplinary requirements for each class of project are discussed in Sections 24.3, .4, and .5. The Region Local Programs Engineer can advise local agencies on how to set up an interdisciplinary approach.

For projects that may involve historic and/or archaeological lands, the local agency should contact the State Historic Preservation Office at (360) 586-3066.

It is permissible to complete activities, such as budgeting, prospectus development, legislative or feasibility studies, and value engineering studies prior to the environmental evaluation. At the discretion of the local agency, other activities, such as preliminary engineering for soil surveys and location studies, may be done in conjunction with or prior to the environmental evaluation.

Flow charts depicting the NEPA environmental processes for each class of project are included in Section 24.2. Definitions of terms used in these processes are given in the Glossary.

All EISs will be written in a format described in WSDOT’s *EIS Format Standards* (M 31-14). If these documents are presented to the public, the documents must have English units. Therefore, if a project is designed in metric, the environmental documents must show dual English/metric units.

24.2 Project Classification

All projects will be classified by the local agency as either Class I, II, or III as defined below. The classification should take place as early as possible in the project's development since the scope of the subsequent environmental evaluation and documentation processes depends on the project's class. Upon this determination, the local agency completes the environmental classification section of the project prospectus.

The following paragraphs define the three classes of projects and list types of work typically found in each class.

.21 Class I, NEPA — Environmental Impact Statement (EIS). Actions likely to have significant impact on the environment by virtue of their effects upon land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services, natural resources, or by virtue of the fact that they are apt to create public controversy are Class I projects. An EIS can be prepared without developing an Environmental Assessment (EA). Refer to Sections 24.3 and 24.7.

Projects which usually require an EIS are:

- a. A new controlled-access freeway.
- b. A highway project of four or more lanes on a new location.
- c. New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated-guideway transit).
- d. New construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway facility.

The local agency checks the "preliminary" box and completes the Local Agency "Environmental Classification Summary" (ECS) form utilizing known project information, as developed in the planning stage and/or the Growth Management Act requirements on all Class I projects. The ECS is submitted by the local agency with the Project Prospectus and the Local Agency Agreement to the Region Local Programs Engineer for submittal to FHWA for preliminary concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

Class I projects under the NEPA/SEPA/Section 404 Interagency Working Agreement (for a copy, see the Environmental Affairs Office home page at <http://www.wsdot.wa.gov>) involve projects that impact Waters of the United States or Waters of the State require an individual permit from the U.S. Army Corps of Engineers (COE). Local agencies will perform the required environmental scoping as a priority after project funding is obligated. After scoping is completed, the local agency checks the "final" box and completes the ECS for submittal to the Region Local Programs Engineer for FHWA's final concurrence. The local agency distributes copies to

resource agencies for information and coordination purposes. See Appendix 24.101 for other environmental requirements pertaining to the Project Definition and Budget stage of project development.

After scoping is completed for Class I projects that are not included in the NEPA/SEPA/Section 404 Interagency Working Agreement, the local agency checks the "final" box and completes the ECS for submittal to the Region Local Programs Engineer for FHWA's final concurrence. The ECS should be submitted as early as possible and/or practical in the project development stage. The local agency distributes copies to resource agencies for information and coordination purposes.

.22 Class II, NEPA — Categorical Exclusion (CE). Unless specifically requested by other agencies or the public, these actions do not require an EIS or an EA.

CEs are actions which meet the definition contained in 40 CFR 1508.4 and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic, or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

Any action which normally would be classified as a CE but could involve unusual circumstances will require the FHWA and the Federal Transit Administration (FTA), in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or
- Inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action.

Class II projects requiring documentation (Documented CE).

Projects in this category require the local agency to complete the ECS and conduct a biological assessment evaluation (Section 24.7) for submittal to the Region Local Programs Engineer for FHWA's concurrence prior to beginning the PS&E.

Projects may require detailed environmental studies for CE documentation to determine the environmental, economic, and social impacts. After obligation of PE funds, the detailed analyses can take place and the local agency finalizes the ECS for final approval.

Examples of these situations are as follows:

1. The acquisition of more than minor amounts of temporary or permanent strips of right-of-way for construction of such items as clear vision corners and grading. Such acquisitions will not require any commercial or residential displacements.
2. The use of properties protected by Section 4(f) of the Department of Transportation Act (49 USC 303).
3. A determination of adverse effects by the State Historic Preservation Office.
4. Any U.S. Coast Guard construction permits or any U.S. Army Corps of Engineers Section 404 permits.
5. Any work in wetlands.
6. Any work encroaching on a regulatory flood-way or any work affecting the flood-plain (100-year flood) elevations of a water course or lake.
7. Construction in, across, or adjacent to a river designated as a component or proposed for inclusion in the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/ U.S. Department of Agricultural.
8. Any changes in access control.
9. The use of a temporary road, detour, or ramp closure unless the use of such facilities satisfy the following conditions:
 - Provisions are made for access by local traffic and so posted.
 - Through-traffic dependent business will not be adversely affected.
 - The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.
 - The temporary road, detour, or ramp closure does not substantially change the environmental consequences of the action.
 - There is no substantial controversy associated with the use of temporary road, detour, or ramp closure.
10. Any known hazardous materials sites or previous land uses with potential for hazardous materials sites or previous lands uses with potential for hazardous materials remains within the right-of-way.

11. Any projects that involve unusual circumstances not listed or public opposition.
12. Any project in a designated evolutionarily significant unit (ESU).

.23 Class III, NEPA — Environmental Assessment (EA).

For actions in which the significance of the impact on the environment is not clearly established, an EA is prepared to determine the extent of environmental impact and to determine whether an EIS is needed. No EIS is required when the EA supports a NEPA Finding of No Significant Impact (FONSI). Refer to Sections 24.5 and 24.7.

The local agency checks the “preliminary” box and completes the Local Agency “Environmental Classification Summary” (ECS) form utilizing known project information, as developed in the planning stage and/or the Growth Management Act requirements on all Class III projects. The ECS is submitted by the local agency with the Project Prospectus and the Local Agency Agreement to the Region Local Programs Engineer for submittal to FHWA for preliminary concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

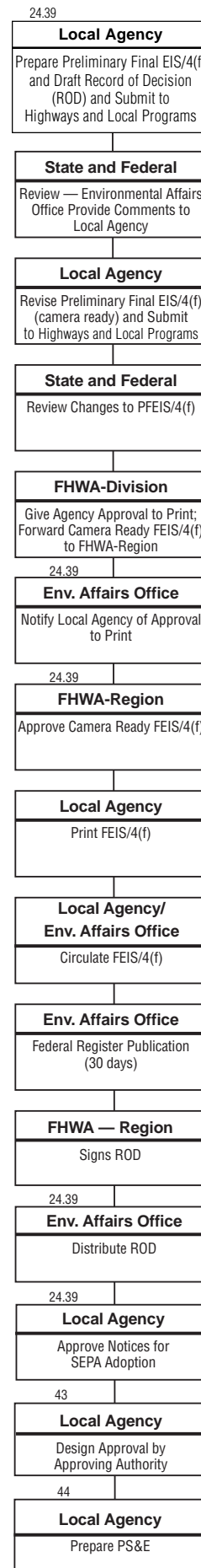
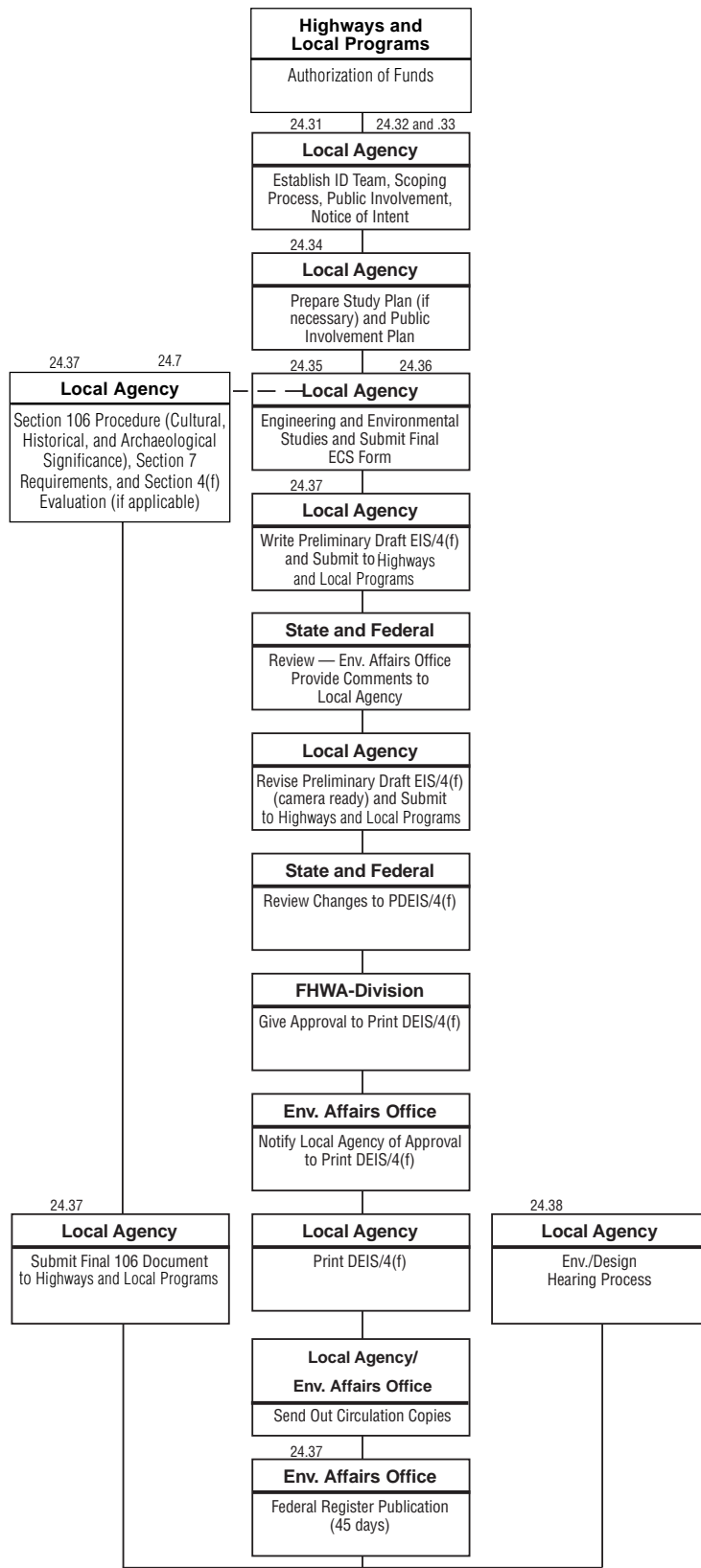
Class III projects under the NEPA/SEPA/Section 404 Interagency Working Agreement (for a copy, see the Environmental Affairs Office home page at <http://www.wsdot.wa.gov>) involve projects that impact Waters of the United States or Waters of the State require an individual permit from the U.S. Army Corps of Engineers (COE). Local agencies will perform the required environmental scoping as a priority after project funding is obligated. After scoping is completed, the local agency checks the “final” box and completes the ECS for submittal to the Region Local Programs Engineer for FHWA’s final concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

Class III projects not included in the NEPA/SEPA/ Section 404 Interagency Working Agreement. After scoping is completed, the local agency checks the “final” box and completes the ECS for submittal to the Region Local Programs Engineer for FHWA’s final concurrence. The final ECS should be submitted as early as possible and/or practical in the project development stage. The local agency distributes copies to resource agencies for information and coordination purposes.

24 Progress Flow Charts for Class I, II, and III Projects.

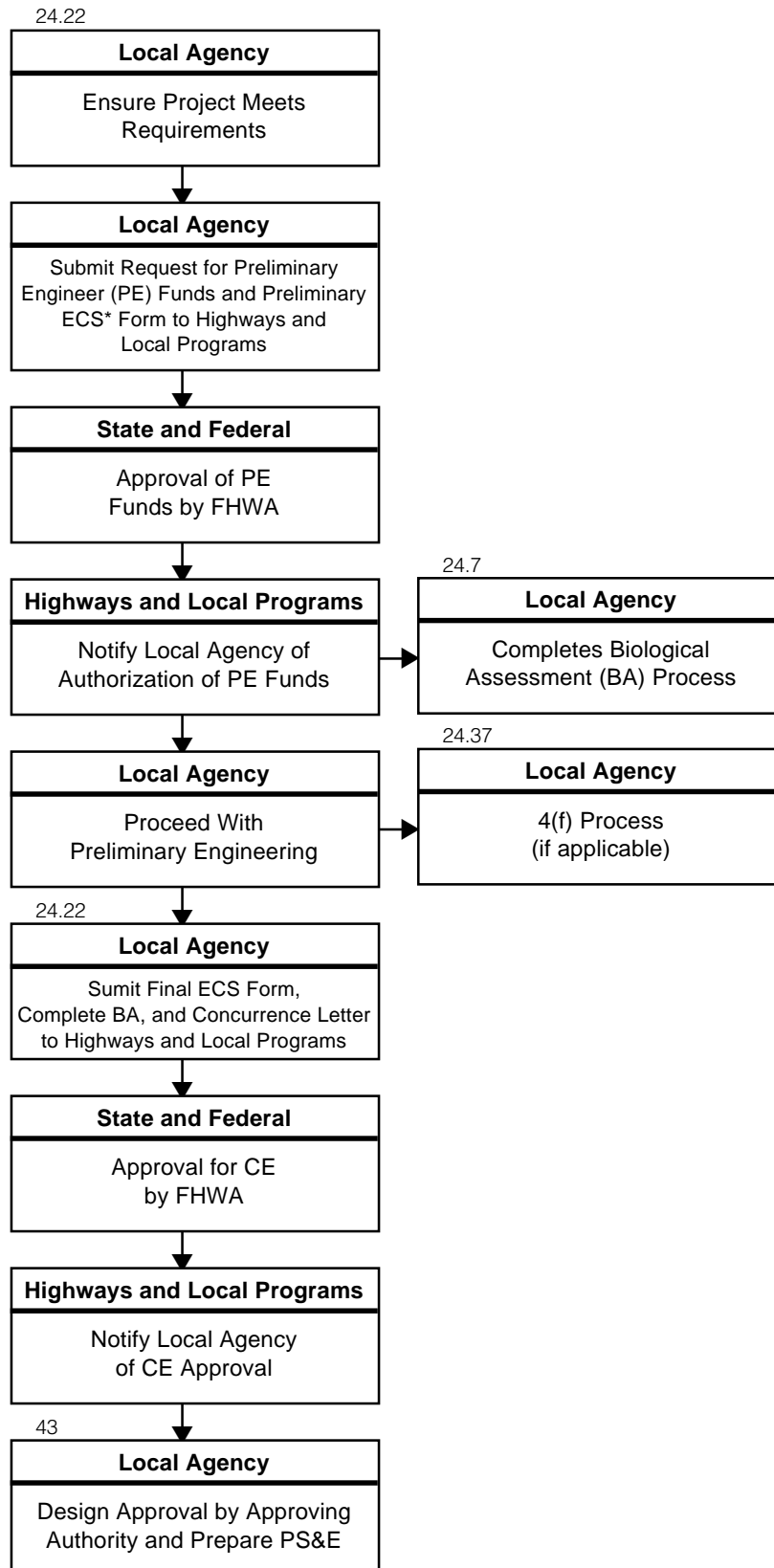
The following flow charts illustrate the progress through which Class I, Class II, and Class III projects should follow.

Class I Projects



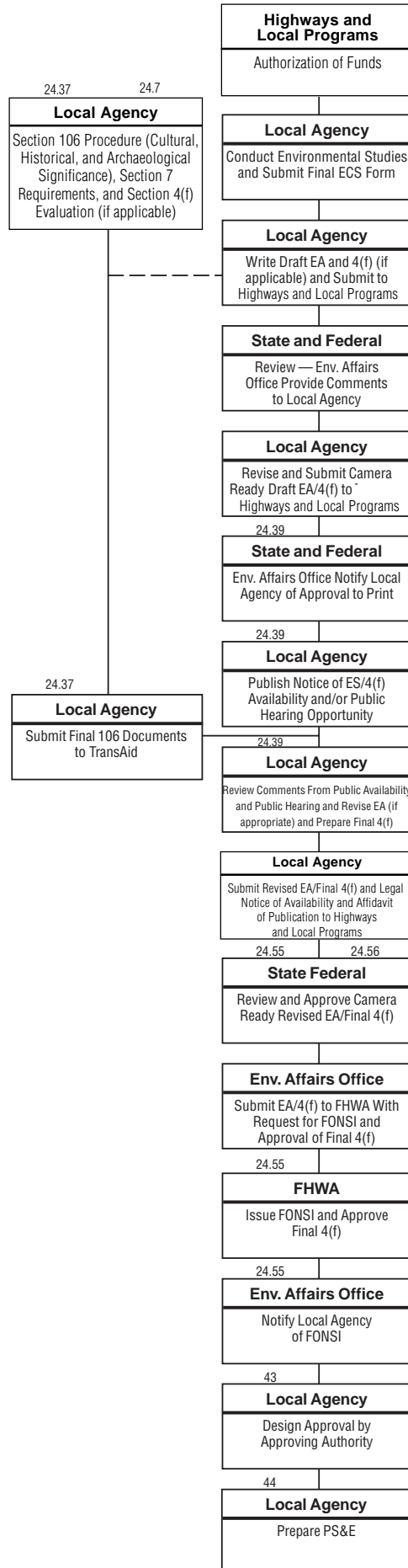
Class II Projects

Projects Requiring Documentation



*If project requires detailed environmental studies for CE documentation or preparation of an EA.

Class III Projects



24.3 Procedures for Class I Projects

The activities described in this section are summarized on the flow chart for Class I projects contained in Section 24.24.

.31 Notice of Intent. After FHWA authorization of preliminary engineering funds, the local agency prepares a Notice of Intent for publication in the Federal Register advising federal, state, and local agencies that an EIS will be prepared. The contents and guidelines for preparation of the notice are found in FHWA Notice N 6640.19 of March 24, 1980. The notice is submitted to the Environmental Affairs Office which submits it to FHWA for placement in the Federal Register.

.32 Project Manager (PM) and Interdisciplinary Team (IDT). The agency administrator delegates the project's administrative responsibilities to a Project Manager and provides support staff to assist in project administration.

The local agency appoints experts in various disciplines to an IDT which functions as an advisory board to the agency administrator. The IDT provides objective in-depth studies, analyses, reports, guidance, and recommendations concerning the proposed improvement as it relates to social, economic, and environmental issues.

The disciplines and personnel selected for the IDT depend on the nature and magnitude of the project. The local agency may request WSDOT to assign discipline representatives to the IDT. WSDOT personnel are assigned when available and may be supplemented by consultants, personnel from other state or local agencies, and the community. The IDT, community groups, and planning agencies may suggest inclusion of additional disciplines.

IDT members may have expertise in such areas as acoustics, air quality, archaeology, architecture, biology, botany, communications, economics, geology, hydrology, landscape-architecture, meteorology, sanitary engineering, sociology, structural engineering, transportation planning, urban planning, water quality, and other disciplines as appropriate.

Duties and responsibilities of the IDT include:

- a. Review and approval of a study plan and a public involvement plan.
- b. Evaluation of alternative courses of action.
- c. Preparation of reports (data and conclusions of technical studies; views of citizens, officials, and groups).
- d. Submission of recommendations to the PM.

The PM, in consultation with the various disciplines, prepares a proposal, identifies affected parties, and outlines environmental concerns and alternatives to be included in the scoping process.

.33 Scoping. Scoping is a process used to identify potential environmental concerns or controversy and alternatives for the EIS as early as possible. It includes a series of meetings, telephone conversations, or written comments involving various agencies, interest groups, and individuals.

The PM is responsible for development and coordination of the scoping process. Specific scoping objectives are:

- a. To identify the affected public and agency concerns.
- b. To define the issues and alternatives to be examined in detail in the EIS.
- c. To save time by attempting to ensure that draft EISs adequately address relevant issues, thus reducing the possibility that an EIS will have to be rewritten or supplemented.
- d. To facilitate an efficient EIS preparation process by assembling the cooperating agencies, ascertaining which permits and reviews need to be scheduled concurrently, and establishing completion times.

Prior to the scoping process, the local agency provides affected agencies, Indian tribes, interest groups, and the IDT with information about the proposal including a brief description, statement of goals, tentative alternatives, probable environmental impacts and issues, maps, drawings, and a brief explanation of the scoping procedure. The local agency also must submit a written request to initiate formal Section 106 consultation with the appropriate tribal governments. The PM documents proceedings and correspondence concerning the scoping process.

The scoping process continues through the development of the DEIS.

.34 Study Plan and Public Involvement Plan.

- a. The local agency should prepare a study plan. It should be completed immediately after the issues and alternatives have been identified in the initial stages of the scoping process. The study plan, which shows the environmental studies to be conducted, is prepared by the PM and approved by the IDT and the local agency. The study plan describes the level of effort intended for defining the interdisciplinary approach, public involvement, alternatives to be studied, and social, economic, and environmental issues.

The study plan should indicate the following:

1. Title sheet:
 - (a) Project title.
 - (b) Date.
 - (c) Approval date and signature of:
 - Team chairman.
 - Agency administrator.
2. Vicinity map.

3. Need and purpose:
 - (a) Need (known deficiencies).
 - (b) History (if applicable).
 - (c) Purpose of project.
 - (d) How proposed project will satisfy the need.
 4. Scope of work:
 - (a) Interdisciplinary approach (brief description of how the team uses interdisciplinary information to reach decisions).
 - (b) Alternatives.
 - (c) Public involvement summary (to date).
 - (d) Brief description of areas of primary importance and significant controversy.
 5. List of cooperating agencies.
 6. Studies to be prepared and areas of responsibility:
 - (a) List of studies to be prepared and disciplines involved.
 - (b) Identify IDT members, project manager, and IDT chairperson.
 - (c) Identify education and experience of all expertise in format required for EIS.
 7. Staffing and budget requirements.
 8. Project schedule.
 9. Date and location of scoping meetings.
 10. Appendix: Public involvement plan.
- b. The local agency must prepare a public involvement plan that outlines the procedures for presenting information to the public, obtaining comments, and ensuring consideration of public opinion.
- In preparing the public involvement plan, consider the following:
1. Methods to provide information and receive comments:
 - (a) Public meetings.
 - (b) Surveys of public opinions.
 - (c) Meetings with groups having special interests in transportation.
 - (d) Information centers or booths.
 - (e) Advisory committees.
 - (f) Meetings with public officials.
 - (g) News releases (all mass media).
 - (h) Newsletters.

- (i) Presentations and call-in questions on radio and television talk shows.
2. Time schedule to accomplish each task (different methods may be carried out simultaneously.)
3. Methods to be used in considering public comments during the decision-making process.
4. Personnel, time, and funds required to conduct the program.
5. The public involvement plan is a part of the scoping process.

.35 Selection of Alternatives. The alternatives to be studied are identified by the PM, the IDT, and through the scoping process. The IDT studies proposed alternatives and determines their likely social, economic, and environmental effects. Generally, each alternative is developed to the same level of detail so that comparisons of effects can be made. The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives which may have been considered were eliminated from detailed study. Alternatives should be openly discussed with all affected groups.

A listing of features to be considered for each alternative, along with a comparative matrix to assess differences, is shown in the EIS Outline found in WSDOT's *Environmental Procedures Manual*.

Alternatives normally include the following:

- a. The no-action alternative which could include short-term minor reconstruction activities (safety improvements, etc.) that are part of an ongoing plan for continuing operation of the existing roadway.
- b. Improvement of the existing facility, which could include resurfacing, restoration, rehabilitation, and reconstruction types of activities.
- c. Construction of new transportation facilities on new routes and locations.
- d. Multimodal alternatives, including public transit, rail, or other modes dictated by the characteristics of the study area. These may be under the jurisdiction of other lead agencies and require early coordination.
- e. Possible combinations of b, c, and d above.

.36 Data Collection, Inventory, and Evaluation. The IDT develops an inventory of social, economic, environmental, and engineering data. The information is used to define the environment; to predict and analyze project impacts; to help select the preferred alternative; to prepare environmental documents; and to inform other agencies, interest groups, or individuals. Sources of data include, but are not limited to, field studies, consultation, and coordination with other agencies and the public. WSDOT's *Environmental Procedures Manual* and FHWA Technical Advisory

T6640.8A are general guides to the types of information, depth of study, and procedures to be used in collection, inventory, and evaluation of required environmental data. The following is a list of areas considered in the development of an environmental document.

Biological/Physical:

- Air Quality
- Noise
- Energy
- Geology and Soils
- Waterways and Hydrological Systems
 - Water Body Modification
 - Wild and Scenic Rivers
 - Coastal Zone Impacts
 - Coastal Barriers
- Flood Plains
- Water Quality
- Wetlands
- Wildlife, Fisheries, and Vegetation

Social/Economic:

- Farmland
- Land Use
- Social Elements
 - Community Cohesion
 - Environmental Justice — The goal is that minority and low income individuals should not suffer a disproportionate share of negative environmental impacts resulting from federal, state, local and tribal programs and policies. It also mandates consultation with all potentially affected groups in the development of projects with environmental impacts.
 - Recreation — When applicable include a 6(f) discussion. Section 6(f) of the Land and Water Conservation Fund Act of 1965 states: No property acquired or developed with assistance under this section shall, without the approval of the Secretary (of the Interior), be converted to other than public recreation uses. The Secretary shall approve such conversions only if it is found to be in accord with the then existing comprehensive state outdoor recreation plan and only upon such conditions as is deemed necessary to assure the substitution of the recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location. (see the *Environmental Procedures Manual* (M 31-11) Volume 2, Chapter 3-7, for additional information)
 - Regional and Community Growth
 - Services
 - Pedestrian and Bicyclist Facilities
- Economic Elements
 - Employment
 - Tax Revenues
 - Property Values

- Relocation
- Historic and Archaeological Elements
- Hazardous Waste
- Visual Quality
- Construction Activity Impacts
- Irreversible and Irretrievable Commitment of Resources
- Relationship of Short-Term Uses of Environment and Long-Term Productivity
- Secondary and Cumulative Impacts

.37 Reports and Recommendations.

- a. Discipline Reports. After data has been collected, inventories compiled, and analyses completed, each discipline representative prepares a segment of the report. The reports document the technical studies and investigations performed, provide a summary of findings, and list recommendations. If there are any individual reports, they should be submitted to the project manager for review.

Since the reports must communicate equally to technical and nontechnical groups, a summary is written to present the significant findings and recommendations in nontechnical terms. The information is presented in a form suitable for incorporation into the EIS, for presentation at public hearings, or for use by management and lay groups in decision-making. The summary must contain an introduction, conclusions, and recommendations.

The technical portion of the discipline report provides evidence that all the major areas of potential impact have been considered. It presents information to support the findings of significance and effect, and demonstrates clearly that the study is in compliance with the requirements of environmental law. The discipline report normally contains:

- Summary of report findings, conclusions, and recommendations.
- Background discussion.
- Study methodology.
- Coordination with other groups or agencies.
- Affected environment (existing conditions).
- Prediction of impacts of each alternative.
- Impact mitigation measures.
- Biological Assessment (Section 24.7).
- Section 106 Documentation (Section 24.8).
- Construction information.
- Maintenance and operation information.
- Bibliography.

- b. Preliminary Recommendations. The PM reviews all discipline reports and documents preliminary recommendations after discussing the various trade-offs with the IDT.
- c. Draft Environmental Impact Statement (DEIS) and Commitment File. The DEIS is the initial local agency project report. It identifies the alternative actions and presents an analysis of their impacts on the environment. Usually the DEIS does not identify a recommended course of action. The DEIS summarizes the early coordination process, including scoping, and identifies the key issues and pertinent information received through these efforts.

All EIS documentation must comply with the requirements of NEPA and the Council on Environmental Quality (CEQ) guidelines.

On projects where federal agencies have funding or permitting responsibility, one federal agency is the lead agency. The local agency, WSDOT, and the federal lead agency are mutually responsible for the EIS. Any other federal agency may be involved as a cooperating agency. Projects jointly developed with a federal agency should comply with that agency's regulations and guidelines.

The local agency prepares a preliminary DEIS using data supplied by the IDT and other sources.

The local agency also prepares a commitment file consisting of proposed mitigating measures, commitments made to other agencies, and any other commitment made on behalf of the project. The local agency is responsible for maintaining the commitment file during the environmental review process.

Upon completion of the preliminary DEIS, the local agency submits the document to the Regional Highways and Local Programs Engineer for review and comment by the Olympia Service Center and FHWA.

Review comments are returned to the local agency for revision of the preliminary DEIS as appropriate. After making changes in response to comments on the preliminary DEIS, the local agency submits the DEIS to the Regional Highways and Local Programs Engineer for processing (signature) of the title sheet by the WSDOT Director, Environmental Services. FHWA and the Environmental Affairs Office returns the signed title page and approval to print the DEIS. Required copies of the document are then submitted to the Regional Highways and Local Programs Engineer for circulation.

The DEIS is submitted to the WSDOT Environmental Affairs Office for transmittal to the EPA for processing so that a notice may be published in the Federal Register. A comment period of not less than 45 days begins upon publication in the Federal Register.

The DEIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the EPA.

Circulation of the DEIS is a responsibility shared between the local agency and the WSDOT Environmental Affairs Office. The local agency circulates the DEIS to any agency, organization, public official, or person who expresses interest in or requests it. The agency also provides it to any governmental agency authorized to develop and enforce environmental standards, and any governmental agency authorized to issue permits. The Regional Highways and Local Programs Engineer will coordinate with the WSDOT Environmental Affairs Office and FHWA to ensure that circulation of the DEIS is accomplished in accordance with federal and state requirements. Generally, all copies of the DEIS are furnished free of charge. After initial circulation, a printing fee may be charged as long as it does not exceed the cost of printing.

- d. Draft Section 4(f) Evaluation. Section 4(f) of the Department of Transportation Act states that the FHWA will not approve the use of land from a significant publicly owned, park recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:
 - There is no feasible and prudent alternative to the use of land from the property; and
 - The proposed action includes all possible planning to minimize harm to the property resulting from such use.

A section 4(f) evaluation must be included in a separate section of the environmental document (see the *Environmental Procedures Manual* (M31-11) Volume 3, Chapter 5-3 for additional information).

A separate evaluation is prepared for each location within the project where the use of Section 4(f) property is being considered. The Section 4(f) evaluation must include:

1. Description and need for the proposed action.
2. Description of the Section 4(f) properties.
3. Impacts on the resource by each alternative.
4. Alternatives that avoid Section 4(f) properties and their impacts.
5. Measures to minimize harm.
6. Coordination with appropriate agencies.

The DEIS and Draft Section 4(f) Evaluation Report must be circulated to the Secretary of the U.S. Department of the Interior for a 45-day review and comment period. When appropriate, the Secretary of Housing and Urban Development and the Secretary

of Agriculture (federal) are also given an opportunity to review the proposal. When a Section 4(f) property is identified after the DEIS has been processed, a separate Section 4(f) Evaluation is prepared, circulated for comment, and finalized. See Section 24.39(c) below.

- e. Section 106 Preliminary Case Report. Section 106 of the National Historic Preservation Act of 1966 requires that the agency determine whether there are any National Registers listed or eligible properties that could be affected by the proposed project.

See Section 24.8 for process guidelines.

Section 4(f) requirements apply when the Section 106 property in question is on or eligible for the National Register of Historic Places. When a Section 4(f) Evaluation is required, the Section 106 Preliminary Case Report and Draft Section 4(f) Evaluation will be one document to satisfy the requirements of both laws.

For further information, see the WSDOT *Environmental Procedures Manual* mentioned in Section 24.35.

.38 Hearings and Notices. When the local agency advertises for an environmental, design, or combined environmental/design hearing, or offers a notice of opportunity for public hearing, the notice will comply with requirements of 23 CFR, Part 771.111(h) and announces the availability of the environmental document and where it may be obtained and/or reviewed. Where hearings are not required by statute, an informational meeting may serve as a useful forum for public involvement in the environmental process.

a. References:

1. Council on Environmental Quality (CEQ) Regulations, 40 CFR, Part 1506.6.
2. USDOT Order 5610.1C.
3. 23 CFR, Part 771.
4. WAC Orders 197-11-510 and 535.

b. NEPA Requirements:

1. Public hearings are required for NEPA projects when:
 - (a) Substantial environmental or public controversy exists;
 - (b) The local agency has a substantial interest in holding a hearing; or
 - (c) An agency with jurisdiction over the proposal (permitting agency) requests a hearing.
2. The Notice of Availability of the DEIS will include the name of the federal lead agency. If there is involvement in floodplains, wetlands, Section 4(f) lands, or endangered species, this information is included in the notice. These

notices are printed in the Federal Register by the lead agency. The notice must be published at least 15 days in advance of the public hearing.

Examples of notification methods are publishing a notice in a newspaper of general circulation in the general geographic area of the proposal; notifying private groups that are known to be interested in a certain proposal; contacting news media; and placing notices in appropriate regional, neighborhood, or ethnic periodicals. The notice should be published at least 30 days in advance of the public hearing. During this period, the DEIS is open to consideration and comment.

The DEIS notice of availability describes the following elements:

- location of project
- brief description of work
- purpose of statement
- responsible agency
- where documents are available
- where to send comments

.39 Final Reports and Approvals.

- a. Final Recommendation. The local agency reviews comments from the hearings and those received from evaluation of the DEIS, and prepares a hearing summary that it submits to the Regional Highways and Local Programs Engineer for review.

The local agency then analyzes and coordinates comments on the DEIS with the IDT and prepares a final recommendation. The final recommendation contains a description of the preferred alternative, identifies any significant adverse impacts, the proposed measures to minimize harm, and any monitoring or enforcement programs required to ensure implementation of mitigation measures. The local agency submits this recommendation with appropriate comments to the Regional Highways and Local Programs Engineer for review.

- b. Final Environmental Impact Statement (FEIS). The local agency prepares the FEIS, coordinates preparation and processing procedures with the Regional Highways and Local Programs Engineer, and submits the FEIS to the Regional Highways and Local Programs Engineer. The FEIS contains the local agency's final recommendation for the preferred alternative, evaluates all reasonable alternatives considered, discusses substantive comments received on the DEIS, summarizes citizen involvement, and describes procedures required to ensure that mitigation measures are implemented. The FEIS also documents compliance with environmental laws and executive orders.

Three optional approaches to preparing an FEIS are possible:

1. The Traditional Approach incorporates the DEIS essentially in its entirety, with changes made as appropriate throughout the document to reflect the selection of the preferred alternative, modifications to the project, updated information, changes in the assessment of impacts, selection of mitigation measures, wetland and floodplain findings, the results of coordination, comments on the DEIS, and the responses to those comments.
2. The Condensed Final EIS avoids repetition of material by incorporating the DEIS by reference. It should present a complete overview of the project and its impacts on the environment. Its focus is on changes in the project, its setting, impacts, technical analysis, and mitigation since circulation of the DEIS. As above, it must include identification of the preferred alternative, coordination efforts, appropriate findings, comments, and their responses.
3. The Abbreviated Version of the FEIS can be used where the only changes needed in the document are minor and consist of factual corrections or an explanation of why comments on the DEIS do not warrant further response. This FEIS would consist of errata sheets making corrections, a section identifying the preferred alternative, any appropriate findings, a list of commitments for mitigation measures for the preferred alternative, and copies or summaries of the comments received and their responses.

For further information about the choice of FEIS approaches, consult the *Environmental Procedures Manual*, M 31-11, and FHWA Technical Advisory T 6640.8A.

The WSDOT Environmental Affairs Office will coordinate circulation of the preliminary FEIS for review. Review comments are provided to the local agency for use in revising the FEIS. The WSDOT Environmental Affairs Office reviews the FEIS. The Director, Environmental Services, signs the title page and then obtains approval from the federal lead agency.

The WSDOT Environmental Affairs Office forwards the signed title page to the local agency for insertion into the FEIS. The local agency prints the FEIS and submits it to the Regional Highways and Local Programs Engineer.

Responsibility for circulation, distribution, and coordination of the FEIS is shared between the local agency and the Environmental Affairs Office. The local agency notifies the public of the FEIS availability

in the same manner as for the DEIS (see Section 24.38(b)2, above), except that no comments are solicited. The local agency circulates the FEIS for public review to any person, organization, or agency that submitted substantive comments, any agency authorized to issue permits, and public institutions. The Highways and Local Programs Engineer will coordinate with the WSDOT Project Development Office and FHWA to ensure that circulation of the FEIS is accomplished in accordance with federal and state requirements.

When the use of a Section 4(f) property is identified after the FEIS has been processed, a separate Section 4(f) Evaluation is prepared, circulated for comment, and finalized.

- c. Final Section 4(f) Evaluation. When the selected alternative involves the use of Section 4(f) property, a Section 4(f) Evaluation is included as a separate section in the FEIS. The final 4(f) Evaluation contains:
 1. All information required for a draft Evaluation found in Section 24.37d.
 2. A discussion supporting a conclusion that there are no feasible and prudent alternatives to the use of the Section 4(f) property. The discussion must demonstrate that there are unique problems or unusual factors involved in the use of any alternatives that avoid these properties, or that the costs of these alternatives in terms of finances, social, economic, environmental impacts, or community disruption resulting from such alternatives would be extraordinary.
 3. A discussion documenting that the proposed action includes all possible measures to minimize harm to the Section 4(f) property.
 4. A summary of the formal coordination with the Department of the Interior and, as appropriate, the U.S. Departments of Agriculture and Housing and Urban Development.
 5. A copy of the Memorandum of Agreement with FHWA when historical or archaeological lands are involved.
 6. Copies of all formal comments received and responses to questions.
 7. Concluding statement, "Based upon the above considerations, it is determined that there is no feasible and prudent alternative to the use of land from the Section 4(f) property and that the proposed action includes all possible planning to minimize harm to the Section 4(f) property resulting from such use."

- d. Record of Decision (ROD). This document is prepared by the local agency in draft form. The local agency submits the draft ROD with the preliminary final EIS. The ROD accompanies the FEIS through the review and approval process. The ROD includes the information required by Section 1505.2 of the CEQ Regulations.

The following format is used:

1. Decision. Identify the selected alternative. Reference to the FEIS may be used to avoid repetition.
2. Alternatives considered. Briefly describe each alternative (with reference to the FEIS, as above) and explain the balancing of values underlying the decision. Economic, environmental, safety, traffic service, community planning, and other factors have different values and may be given different levels of importance. Identify the reasons why some values were considered to be more important than others. Describe the manner in which these values were considered in arriving at the decision. Identify the environmentally-preferred alternative or alternatives. Where the selected alternative is other than the environmentally preferable alternative, the ROD should clearly state the reasons for not selecting the environmentally preferable alternative. In addition, if Section 4(f) property is used, summarize the Section 4(f) Approval.
3. Measures to minimize harm. Describe all measures to minimize environmental harm that have been adopted for the proposed action. State whether all practicable measures to minimize environmental harm have been incorporated into the decision and, if not, why.
4. Monitoring or enforcement program. Describe any monitoring or enforcement program that has been adopted for the specific mitigation measures, as outlined in the FEIS.
5. Commitment list. Include an item-by-item list of commitments and mitigation measures from the commitment file. The list serves as a ready reference for the design, construction, and maintenance of the project.

24.4 Procedures for Class II Projects

The activities described in this section are summarized on the flow chart for Class II projects.

- Projects Requiring Documentation (Documented CE)

If any CE project affects Section 4(f) properties, the project is a "Projects Requiring Documentation." A separate Section 4(f) Evaluation is required as outlined in Section

24.37 d. Supporting documentation must also be prepared for CE projects that may effect wetlands, farmlands, flood plains, or cultural resource properties.

The Environmental Classification Summary (ECS) (DOT Form 140-100 EF) Part 5, requires the local agency to conduct a Biological Assessment (BA) evaluation of the proposed project's impacts on any listed or proposed Endangered Species Act (ESA) species or critical habitat within the project area. This evaluation is called a BA and must be completed on all federal aid projects prior to requesting federal aid funding authorization for right-of-way or construction phase. See Section 24.7 for the details of the BA process.

24.5 Procedures for Class III Projects

The activities described in this section are summarized on the flow chart for Class III projects contained in Section 24.23.

- .51 Appointment of Disciplines and Project Manager.** After authorization of preliminary engineering funds, the local agency appoints experts in various disciplines to conduct all studies necessary for EA preparation and appoints a PM to be responsible for development of the project. These projects do not require a formal IDT but must use an interdisciplinary approach for the needed investigations.
- .52 Coordination.** The local agency coordinates with affected federal, state, and local agencies, Indian tribes, interest groups, and the public in determining the scope of the action, alternatives to be considered, and the issues to be addressed. The PM is responsible for the coordination. During the early coordination process, FHWA, in cooperation with Highways and Local Programs and the local agency, requests that other involved agencies become cooperating agencies. By law, federal agencies having jurisdiction or special expertise must become cooperating agencies when requested. FHWA normally initiates contact with other federal agencies. FHWA may direct the local agency to contact state or other local agencies. The local agency makes these requests in writing and sends a copy to the Regional Highways and Local Programs Engineer.
- .53 Data Collection, Inventory, and Evaluation.** The various discipline representatives conduct studies to assess the project's social, economic, and environmental impacts. The depth of a study varies with the magnitude of the proposal. Generally, discipline studies for an EA are developed using the same method outlined in Section 24.21 for EIS projects. Studies are carried out to the point where the extent of environmental impact can be determined. If significant impacts are found during the EA, an EIS is required.
- .54 Public Involvement.** The local agency conducts public meetings, mails notices, and uses other methods appropriate to the magnitude of the project to provide and obtain information. Public involvement methods are discussed in Section 24.38.

.55 Reports and Recommendations.

- a. Discipline Reports. Refer to Sections 24.37 and 24.7.
- b. Environmental Assessment. The local agency prepares a preliminary Environmental Assessment (EA) in accordance with the EA outline in WSDOT's *Environmental Procedures Manual*. Include an area map, vicinity map, site plan, photogrammetric maps (to depict the environmental setting), discipline reports, and any letters demonstrating coordination of environmental concerns, such as endangered species listings, prime and unique farmland determinations, archaeological/historic reports, etc. If the project involves the use of Section 4(f) properties, a separate 4(f) Evaluation is required and is included as a separate section in the EA. The local agency prepares a BA evaluation (Section 24.7) to be included as a separate section in the EA.

The preliminary EA and draft Section 4(f) Evaluation are submitted to the Regional Highways and Local Programs Engineer. (Contact the Regional Highways and Local Programs Engineer for number of copies to be submitted.) The WSDOT Environmental Affairs Office will coordinate their circulation.

If reviewers determine that the proposal may have significant environmental impacts, an EIS is required.

If no significant impacts are found, the WSDOT Environmental Affairs Office returns the preliminary EA, with comments, to the local agency for revisions.

The local agency submits the revised EA, with the original cover sheet signed by the local official, to the Regional Highways and Local Programs Engineer. WSDOT approves the EA by signing the cover sheet and forwarding it to the federal lead agency for approval. Once signed by the federal official, the original cover sheet is returned to the local agency for reproduction and binding with the EA.

A notice announcing the availability of the EA is published by the local agency in a newspaper of general circulation. The local agency then coordinates with WSDOT the circulation of the approved EA to affected individuals, interested parties, and local, state, and federal agencies with jurisdiction.

If Section 4(f) property is involved, the document is also circulated to the Department of the Interior. If historic or archaeological lands are involved, the document is also circulated to the State Historic Preservation Officer (SHPO).

When the period for public availability of the EA has ended, the local agency evaluates all comments received, including comments from public hearings (if held), meetings, and open houses. The local agency responds to the comments and revises the document

as necessary. If comments are minor, the local agency may issue an addendum referencing changes to the EA.

The final EA, Notice of Availability, and Affidavit of Publication are submitted to the Regional Highways and Local Programs Engineer with a request for a Finding of No Significant Impact (FONSI). After FHWA issues the FONSI, the WSDOT Environmental Affairs Office returns the signed FONSI to the local agency.

.56 Hearing and Notices. Class III projects require a hearing if: (1) there is substantial controversy; (2) the local agency wants a hearing; or (3) an agency with jurisdiction requests one. For additional information, refer to Section 24.38.

Class III projects normally have less potential for environmental impacts and public controversy than Class I projects, and consequently are less apt to require public hearings. Prepare the EA in advance of any public hearing. The public hearing notice follows the format and time schedule outlined in Section 24.38. The notice of public hearing published in local newspapers should announce that the EA is available and where it can be obtained or reviewed.

Even when a hearing is not required, the local agency will publish a notice in the local newspaper (similar to a public hearing notice) advising the public that the EA is available for review and comment and noting where the document may be obtained. The public review and comment period for an EA is 30 days. If a Section 4(f) Evaluation is included, a 45-day public review and comment period is required.

The local agency notifies the Planning and Community Affairs Agency (Statewide Clearinghouse) via letter that an EA and FONSI are available from the agency or the federal lead agency.

24.6 Project Reevaluation

Whenever single or cumulative conditions have occurred that might cause new or more severe environmental impacts, the local agency shall reevaluate an environmental document.

A **written** reevaluation is required when any of the following conditions exist:

1. An acceptable FEIS has not been submitted to FHWA within three years from the date of the DEIS circulation.
2. Major steps to advance the project (such as approval to acquire a substantial portion of the right-of-way, or approval of PS&E) have not occurred within three years of FEIS approval or supplemental FEIS approval.

The local agency reevaluates the project by conducting appropriate environmental studies or, if necessary, by preparing an EA. The reevaluation is submitted in written form to the Regional Highways and Local Programs Engineer.

If the reevaluation identifies changes in the proposed project, the affected environment, the anticipated impacts, or the proposed mitigation measures, which result in significant impact that were not evaluated in the original EIS, a new or supplemental document is prepared and circulated. Other types of changes including those which substantially reduce the project's impacts, do not require the preparation of a supplement. For additional guidance on project reevaluations, refer to 23 CFR 771 and WSDOT's *Environmental Procedures Manual*.

24.7 Biological Assessments

The Endangered Species Act (ESA) does not allow for **grandfathering**. Any federal action is subject to Section 7 of the ESA, whether or not it is already approved and/or underway. On all federal aid projects under construction the local agency, must evaluate the BA's done for the project, update them if needed, and submit them to Region Local Programs office to forward to FHWA, with a copy to NMFS and/or USFWS.

FHWA must fulfill its responsibilities under the ESA, including coordination with NMFS prior to approval of NEPA. In turn NEPA approval (Documented Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD)) is required, by FHWA regulation, prior to FHWA approval of funding for right-of-way purchase or construction. In order to sign a final Environmental Impact Statement (EIS) or final Environmental Assessment (EA), the FHWA Transportation and Environmental Engineer will need to verify that the document includes the results of the BA required under the ESA. In order to complete the NEPA process by signing a ROD, FONSI, or Documented CE the FHWA Transportation and Environmental Engineer will need to verify that the requirements above have been met, including completion of coordination with NMFS.

For the interim and on a project by project basis, local agencies can request an exception to some of the requirements listed above. FHWA will consider requests to sign NEPA documents, prior to the completion of the biological assessment consultation process, to allow for right-of-way acquisition. FHWA will not authorize construction funding for these projects, however, until the Section 7 consultation requirements have been met. In order to utilize the exception, the project must be able to meet the following requirements:

- The NEPA document (final EIS, FONSI, CE) must:
 - Demonstrate a reasonable project effort to achieve full compliance with the ESA prior to final EIS, FONSI, or CE approval. At a minimum, this would include informal consultation and the submittal of a Biological Evaluation or Assessment to NMFS or USFWS with detail appropriate to address the ESA issues.
 - Identify and describe the meetings held in an attempt to resolve the issues.
 - Outline the concerns/position of NMFS or USFWS and the areas of agreement and disagreement with

supportive documentation, such as agency letters and meeting minutes.

- The NEPA document (final EIS, FONSI, CE) must:
 - Describe the project features and mitigation measures which have been incorporated into the project to avoid, minimize, and/or compensate for project biological impacts.
 - Describe that NMFS or USFWS suggested features and measures, and hopefully, show that the differences between what has been incorporated into the project and what is being requested are not dissimilar.
 - Outline the reasons why full compliance cannot be achieved prior to final EIS, FONSI, or CE approval.
 - Outline a process of further agency coordination that will reasonably result in ESA compliance.

FHWA will only approve final EIS, ROD, FONSI, or CEs where the above requirements have been met and the consequences of delay outweigh the risks. The risks to FHWA will be defined as:

- Any substantial changes to the project as a result of changes in mitigation requirements, may require a supplemental NEPA document to address the changes.
- Right-of-way may be purchased but cannot be used.
- Even if changes required to meet Section 7 do not trigger supplemental documents or change RW needs, they could increase the cost of the project substantially.

FHWA will consider requests to sign NEPA documents for those projects that meet the conditions above. In order to utilize this exception, the local agency must submit to the Region Local Programs office all documentation detailing compliance with the above listed requirements and a written request, signed by the agency's Approving Authority, requesting agreement from FHWA to utilize this exception for the agency's project. After WSDOT Headquarters Highways and Local Programs determines that the project meets all requirements, they will send it to FHWA for concurrence of the request to allow for right-of-way acquisition prior to completion of Section 7 consultation. Upon FHWA concurrence with the local agency's request, FHWA will advise Highways and Local Programs, who will initiate authorization of federal funding for right-of-way acquisition.

Due to the requirements of agencies to meet their responsibilities under the ESA, the following are the interim procedures. These procedures are continually being reviewed and revised which will result in updates by WSDOT Headquarters Highways and Local Programs. Appendix 24.108 provides some definitions of the environmental references.

.71 Species Listings. The agency must request ESA species listings to assist in assessing a project's environmental impacts from the National Marine Fisheries Service (NMFS), the United States Fish and Wildlife Service (USFWS), the Washington State Department of Natural Resources (DNR), and the Washington State Department of Fish and Wildlife (WSDFW). (Appendix 24.103) These requests are for the agency's entire jurisdiction and will be applied to all of the agency's federal aid projects. These requests must be updated every six months. (Appendix 24.104) Federal and state resource agencies generally have 30 days to respond to a species listing request. The species listings for the NMFS must be obtained from the Region Local Programs office.

For species which are proposed for listing, but not yet listed, any federal action must be evaluated to determine whether it jeopardizes the continued existence of the species. For projects which will not be completed before the proposed listing could take affect, the species should be treated as if it were listed with a conditional effect determination.

Until the project is completed, the agency must request updated species listings from NMFS, USFWS, DNR, and WSDFW, every six months. Agencies needing assistance obtaining species listings should contact their Region Local Programs Engineer. If any species listings or locations have changed, the BA shall be updated appropriately. Verification of the requests will be included as part of the agency's project management review.

.72 Project Evaluation. Section 7 of the ESA requires that any federal aid project must be evaluated to determine its effects on listed or proposed species and/or critical habitat. The species information and completion of the ECS Part 5 will assist the agency in completing a project evaluation. The evaluation is a guide to assess the project's impact to any listed species or critical habitat.

If the evaluation determines the need to consult with a biologist, the biologist will:

- Conduct a field review.
- Assess the impacts on all listed species and habitat.
- Make an "effect" determination for each listed species.
- Write the biological assessment.

Depending upon the evaluation and the extent of the project's impacts, the effect determination (Section 24.73) will be one of three conclusions:

- No Effect
- May Affect, Not Likely to Adversely Affect
- May Affect, Likely to Adversely Affect

The agency will report on the impacts of the project through either:

- a. "No Effects" letter BA. Typical items to include in the letter are:
 - Species listings;
 - A signed ECS;
 - Brief discussion of the project, its impacts, and justification for the "no effect" determination.
- b. Complete BA report. Typical items to include in the report are:
 - A brief description and location of the project;
 - Construction information including when the work will be completed;
 - Description of listed species or habitat within the project area;
 - Evaluation of the potential "effects" on listed species or critical habitat;
 - Assertion of "effect" determinations for each listed species;
 - Development and recommendations of conservation and mitigation measures;
 - Bibliography.

The decision to do a BA depends on the level of potential impacts to streams or surface waters which are within the geographical range of the listed species or population. A BA report should be done when projects cross streams (bridges, culverts), require any construction activity within the active channel (retaining walls, riprap, channel relocations), cause the discharge of additional stormwater or other drainage directly to streams through surface channels without soil or other filtration, significantly increase the volume of surface runoff to salmon streams, result in the removal or alteration of riparian vegetation areas adjacent to streams with listed populations, or when listed species or critical habitat are present.

.73 Effect Determinations. If a federal aid project is in an area where there are species designated as Threatened or Endangered, the ESA requires that FHWA make a determination of the effect of the project on the listed species or critical habitat. FHWA must make this determination of affect in consultation with NMFS (for marine species) or USFWS (for all terrestrial and freshwater species). Part 5 of the ECS includes a checklist which will assist the agency in the determination of effect.

- a. No effect. This conclusion is appropriate if the project has no impact on any listed species or critical habitat and the ECS Part 5 yields a no effect.

For some projects, the local agency may be able to make a no effect determination without a BA report. In this case, a "No Effects" letter BA (Appendix 24.105) stating the basis for the effect determination will be sufficient. The agency would address the type of work

the project entails and why these actions would not impact the species in the area. Or if there are no species or critical habitat in the area, the letter would explain the items the agency marked “yes” on Part 5 of the ECS. This explanation would include a justification of those items and identify the agency procedures to ensure a no effect determination.

If a biologist evaluates the project and concludes the project has “no effect” on any of the listed species or critical habitat, the agency’s “no effect” letter BA will include a brief discussion of the project, its impacts and justification for this determination.

To meet the obligations under the ESA, the Highways and Local Programs Service Center and FHWA must review the no effect determination for adequacy and concur with the determination. The local agency will forward a copy of the completed BA and ECS to the Regional Highways and Local Programs office. The Regional Highways and Local Programs office will forward it to the Highways and Local Programs Service Center for concurrence. Upon the Highways and Local Programs Service Center’s concurrence, a copy of the signed ECS, and the no effects letter BA, and/or the biological assessment is submitted to FHWA, with a copy to NMFS and/or USFWS. This can be done concurrently with the request for federal funding approval.

A response from NMFS and/or USFWS on these projects is not anticipated. NMFS and USFWS have stated they would not issue concurrence letters on projects with no effect determinations. After Highways and Local Programs Service Center reviews the no effect determination and sends it to FHWA (with a copy to NMFS and/or USFWS), the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorize the right-of-way or construction phase of a project.

- b. May Affect, Not Likely to Adversely Affect. This conclusion is appropriate when the project has some effect on the listed species, but that effect is totally beneficial, insignificant, or discountable. BA reports are normally done on “May Affect, Not Likely to Adversely Affect” projects to document the reasons for the not likely to adversely affect conclusion.

If an incidental take is determined to be likely, then a “not likely to adversely affect” conclusion is not appropriate.

To meet the obligations under the ESA, the Highways and Local Programs Service Center and FHWA must review the may effect determination for adequacy and concurrence of the determination. The local agency will forward a copy of the BA report and ECS to the Region Highways and Local Programs office. The Regional Highways and Local Programs office will

send it to the Highways and Local Programs Service Center for concurrence. Upon the Highways and Local Programs Service Center’s concurrence, the signed ECS and a copy of the BA report supporting this conclusion will be forwarded to FHWA, NMFS and/or USFWS, for an informal consultation (written response required).

1. NMFS and/or USFWS must concur in writing with the not likely to adversely affect conclusion prior to FHWA authorizing right-of-way and/or construction funds for a project. The written concurrence for the project is sent to the Highways and Local Programs Service Center and completes the informal consultation process required by Section 7 of the ESA. The Highways and Local Programs Service Center sends the concurrence letters, from NMFS and USFWS, to FHWA, and the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorize funding for the right-of-way or construction phase of the project. (For an exception see 2.)
2. Local agencies can request an exception to the requirements listed above, if a project is time critical and meets certain conditions as outlined in what is referred to as the Section 7(d) letter. This exception must have FHWA concurrence, and be coordinated with NMFS and/or USFWS, prior to FHWA authorizing an agency to purchase right-of-way or go to construction.

Section 7(d) of the ESA prohibits a federal agency which has initiated consultation with NMFS or USFWS on any action from making any “*irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measure.*” The 7(d) letter documents specific projects that could be built without irreversibly or irretrievably committing resources. For these projects, identified on the list sent to NMFS, NEPA may be concluded prior to completion of consultation (written concurrence). Consultation on these projects must be completed and the agency **must “commit”** to construct any mitigation measures that are agreed to during the consultation process.

For projects utilizing the 7(d) provisions of the ESA requires the local agency to commit funding for construction of any mitigation measures that are agreed to during the consultation process. Depending on the timing of the completion of consultation this may be accomplished by a change order to the construction contract or by a new contract.

In order to add a project to the existing 7(d) list of approved projects, the local agency must submit to the Regional Highways and Local Programs office the completed BA and a request letter (Appendix 24.107) signed by the agency's Approving Authority. The letter must include: a request to addendum to the 7(d) project list; outline the time critical aspects of the project; **"commit"** to meet any and all mitigation requirements determined by NMFS and/or USFWS (to be outlined in the concurrence letters); and state the agency will be in continuous consultation with the Highways and Local Programs Service Center and FHWA until such time as NMFS and/or USFWS concurrence.

After Highways and Local Programs Service Center's determine that the project meets 7(d) requirements, they will send it to FHWA for concurrence with the request to addendum the current 7(d) project list. This submittal to FHWA will include the signed ECS and a copy of the BA, and the local agency request letter. Upon FHWA concurrence with the effect determination, FHWA will advise NMFS of the added project, and can authorize federal funding for right-of-way and/or construction phase of the project.

- c. May Affect, Likely to Adversely Affect. This conclusion is appropriate when the project has an affect on the species which is not totally beneficial, is not insignificant (i.e., is measurable), and is not discountable (i.e., is likely to occur). The "May affect, likely to adversely affect" conclusion is supported by a BA which documents the likelihood of a take or measurable impacts on critical habitat within the potential geographical range of the species of concern.

The local agency prepares a BA and sends it to the Region Highways and Local Programs office. The Regional office sends it to the Highways and Local Programs Service Center which submits the BA to FHWA with a letter requesting Formal Consultation. Upon FHWA concurrence with the effect determination, the BA report and request for formal consultation is submitted to NMFS and/or USFWS. The formal consultation takes place with NMFS and/or USFWS, Highways and Local Programs, the local agency, and FHWA.

The ESA gives NMFS 90 days to accomplish this consultation. Extensions of 60 days are often requested. NMFS must respond within 30 days of submission of the BA to the effect determination to initiate formal consultation. If formal consultation is initiated, FHWA cannot approve environmental documentation or federal aid right-of-way and/or construction funding until it is concluded.

After the consultation NMFS prepares a Biological Opinion (BO) within 45 days, documenting the results of the consultation and concluding the Formal Consultation Process. This may result in the issuance of an Incidental take statement or no-jeopardy call by NMFS. Upon agreement by FHWA, Region Highways and Local Programs, and the local agency to incorporate any and all terms and conditions outlined in the biological opinion into the project, the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorize the right-of-way and/or construction phase of the project. Normally the total period required for NMFS to issue a biological opinion including agreed upon extensions will not exceed 195 days. (90 + 60 + 45 = 195 days)

NMFS may recommend or suggest in writing reasonable and prudent measures to remove or eliminate adverse effects of the project to listed species. If the local agency, Highways and Local Programs, and FHWA agree in writing to implement such measures as NMFS recommends, this removes the "likely to adversely affect" conclusion, and the consultation process is completed. FHWA then approves the environmental documentation and federal aid funding for the project.

If the local agency and Highways and Local Programs **do not** agree to such reasonable and prudent modifications to the project, FHWA cannot approve environmental documentation and will not approve participation with federal aid funds. Federal aid funds cannot be used to build the project.

1. Formal Consultation. If NMFS and/or USFWS concurs with a BA finding of "likely to adversely affect," or does not concur with a BA finding of "not likely to adversely affect" or "no effect," they will request initiation of formal consultation procedures in writing to FHWA and explain the basis for the request.

Formal consultation is for projects with more substantial impacts. Local agencies, Highways and Local Programs, and FHWA are required to provide the best scientific and commercial data available or which can be obtained, during the consultation for an adequate review of the effects the action may have on the listed species.

NMFS will review the BA and other pertinent information regarding the project and impacts to the species of concern to determine if it involves a take of the species and also to determine if the project would jeopardize the continued existence of the listed species (or subspecies, population, evolutionarily significant unit (ESU)). Including agreed upon extensions, formal consultation will

be concluded within **195 days** of initiation by the issuance in writing from NMFS of a biological opinion.

- (a) Extensions to Formal Consultation. NMFS may request an extension of the consultation period by mutual agreement among NMFS, the local agency, Highways and Local Programs, and FHWA. Without mutual agreement on the length of the extension, it shall not exceed 60 days past the original consultation period. NMFS may request extension of time and additional data from the local agency, Highways and Local Programs, and FHWA to form a biological opinion. The local agency, Highways and Local Programs, and FHWA will obtain, to the extent practicable, data that can be developed within the scope of the extension. Requests for extensions and additional data notwithstanding, NMFS will issue a written biological opinion at the end of the consultation period using the best scientific and commercial data available.
- (b) Incidental Take Permits. For projects where the local agency's BA and/or NMFS and/or USFWS conclude that incidental taking of listed species will occur and not violate Section 9(a), NMFS and/or USFWS will provide a statement concerning incidental take of individuals or habitat that: 1) specifies the amount or extent of the impact or taking, 2) specifies the reasonable and prudent measures needed to minimize the impact or take, 3) sets forth terms and conditions that must be met by the local agency, Highways and Local Programs, and FHWA to implement the measure specified above, 4) specifies procedures to dispose of taken individuals of the listed species.

If at any time the conditions and measures specified in the incidental take statement are exceeded or violated, the FHWA must reinitiate consultation immediately.

2. Biological Opinion. A BO from NMFS may conclude a finding of jeopardy/no jeopardy; or adverse modification of habitat/no adverse modification of habitat.
 - (a) No Jeopardy/No adverse modification of habitat opinion. A no jeopardy/no adverse modification of habitat opinion indicates the NMFS concludes that the project as proposed will not jeopardize the continued existence of species through direct take or through take/modification of critical habitat. This con-

cludes the consultation process and FHWA can approve environmental documentation and participation with federal aid right-of-way and/or construction funds.

- (b) Jeopardy/adverse modification of habitat opinion. A Jeopardy/adverse modification opinion indicates NMFS has concluded that the construction of the project as proposed jeopardizes the continued existence of the listed species through direct effects on individuals or modification of critical habitat. NMFS may make recommendations for reasonable and prudent measures to remove or lessen the impacts. Agreement by the local agency, Highways and Local Programs, and FHWA to implement these measures changes the jeopardy opinion to a no-jeopardy opinion. This concludes the consultation process and FHWA will approve environmental documentation and authorize participation of federal aid funds.

If NMFS does not respond either within 135 days with a BO or within 90 days with a request for extension or additional data, FHWA can approve environmental documentation for the project and participation with federal aid funds.

.74 ESA Stormwater Effects Guidance. This section provides interim guidance for a project which:

- Increase Impervious Service, or
- Clear, Grade, or Fill (Erosion Control), or
- Have Spill Potential

This guidance only covers specific project activities. It does not cover all of the possible project elements which must be analyzed by the project biologist before a final effect determination, based upon all of the projects activities, is made. Effect determinations must be project specific and this guidance may not fit in every case. There may be instances where the project conditions and site specific circumstances are such that the project does not meet the conditions outlined under one of the effect determinations (e.g. no effect), but the final analysis reaches that conclusion. However, the project specific conditions and rationales can be thoroughly documented in the BA.

For changes to this guidance refer to the *Highway Runoff Manual*. Until additional changes are made, use the *Highway Runoff Manual* or other local ordinances (if they are more stringent) to design the stormwater treatment system.

Understand this guidance assists with the effect determination with respect to stormwater considerations. The overall effect determination for a species and/or critical habitat may or may not be different upon consideration of other factors.

Each project is evaluated for its location, for the effects due to stormwater, clearing, grading and filling, and the effects of all project elements on the baseline indicators before making a final project effect determination. Projects located within a Water Resource Inventory Area with no habitat or potential habitat for listed fish species will have no effect on listed fish species and require no further evaluation.

The following questions need to be answered and included in the BA report to assist in the effect determination due to stormwater issues for the project.

- How much **new impervious surface** is the project creating?
- How much of the **new impervious surface** is being treated for stormwater? (Express as a percentage of the total or provide an amount.)
- What best management practices (BMP) are being used to treat the **new impervious surface** for:
 - a. quality?
 - b. quantity (is infiltration being utilized)?
 - c. what is the receiving area of water body for each BMP? (This includes overflow channels.)
- What is the amount of **existing (pre-project) impervious surface** in the project area?
- What BMPs are being used to treat the **existing impervious surface** for:
 - a. quality?
 - b. quantity (is infiltration being utilized)?
 - c. what is the receiving area of water body for each BMP?
- How much of the untreated **existing impervious surface** is proposed to be treated as part of this project?
- What BMPs are proposed for the treatment of **untreated existing impervious** for:
 - a. quality?
 - b. quantity (is infiltration being utilized)?
 - c. what is the receiving area of water body for each BMP?
- If the project is not infiltrating all of the runoff from the new impervious, and is unable to treat a minimum of 140% of the new impervious surface for quality and quantity, explain why:

The effect determination with respect to stormwater considerations may or may not be different than the overall effect determination for a species and/or critical habitat, upon consideration of other factors. The following provides guidance to determining the stormwater effect determination.

a. No Effect

1. Stormwater from new impervious surfaces has no effect when:
 - (a) *New impervious*: Infiltrate with pretreatment for all new impervious. **OR**
 - (b) Stormwater treatment for project is designed to = 140% x the Area of New Impervious surface. (This is based on the assumption that post-project net pollutant loading should not exceed the pre-project loading.) In other words the new impervious surface should not result in any additional pollution to the receiving waters. Since our stormwater best management practices (BMP) are not 100% efficient, some amount of preexisting impervious surface will have to be treated to attain a no-net increase in pollutant loading. The treatment level has been established at 140% of new impervious surface to make up for the fact that the BMPs are not 100% efficient.

Example: A project adds 10 acres of new impervious surface area, which will be 100% treated. How much impervious surface will the project have to treat to attain a “no effects” determination?

Answer: $140\% \times (10 \text{ acres}) = 14.0 \text{ acres}$ which is the 10 new acres plus 4 acres of the existing untreated surface area..

2. Clearing, Grading and Filling has no effect when:

The project is within ESU/Distinct Population Segment (DPS is a USFWS designation for bull trout listings.), clears, grades, and grubs over 300' from any waterbody, provided:

- (a) Temporary Erosion Sedimentation Control (TESC)/ Stormwater Site Plan (SSP) is fully implemented (including spill control)
- (b) “Environmental baseline” is not degraded, including spawning areas (determined by the Biological Evaluation (BE is an evaluation done by a project biologist to determine the effects of the project on listed species. The BE may lead to a biological assessment if necessary.), large woody debris, riparian habitat, etc.

b. May Affect, Not Likely to Adversely Affect

1. Stormwater from new impervious surfaces may affect but is not likely to adversely affect listed fish species and their habitat when:
 - Impervious: Treatment with detention for all new impervious and treats less than 0.40 (new impervious area) of existing impervious within the project limits. (NMFS is concerned that the detention ponds and other BMPs may not be sized large enough due to the fact that the *Highway*

Runoff Manual is based on outdated rainfall data. Section 2-5 of that manual includes a chart which addresses the current safety margin at a later date. In addition, a study is underway to update the rainfall chart.

2. Clearing, Grading and Filling may affect but is not likely to adversely affect listed fish when:
 - The project within ESU/DPS, clears, grades, and grubs within 300 feet of any waterbody (which supports or drains into a listed fish supporting waterbody) but does not include “in water” work, provided:
 - (a) TESC/ SSP is fully implemented (including spill control)
 - (b) “Environmental baseline” is not degraded, including spawning areas (determined by BA), large woody debris, riparian habitat, etc.
 - (c) All other factors evaluated for the project by the project biologist result in a “no effect” or “may affect not likely to adversely affect” determination. This must include an analysis of direct and indirect effects of the action. (A direct and indirect effect analysis must be included which covers the action area. The action area is defined as all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. Thus, if it is a bridge replacement, address the upstream and downstream impacts, bank impacts, construction easement impacts, the road approach impacts, temporary bridge impacts, impacts caused by the detour route, etc.)

Not all projects will be able to meet the above. Some may fall into the “may affect, likely to adversely affect” call.

3. Projects which work within water, may affect but are not likely to adversely affect listed fish if all three of the following conditions are met:
 - Work must be conducted within fish window (Gold & Fish list or as per HPA);
 - Work must occur in a non-spawning or rearing area (as determined by project biologist in conjunction with Washington State Department of Fish and Wildlife Habitat Biologist or Tribal Biologist or other Fisheries Biologist). (The rearing areas include pools, edies, structures, etc., but do not include glides.)
 - The project doesn’t degrade the environmental baseline

c. May Affect, Likely to Adversely Affect

1. Stormwater from new impervious surfaces may affect and is likely to adversely affect when:
 - Less than full treatment for all new impervious surfaces when project is within a subbasin that provides habitat or potential habitat for a listed fish species.
2. Projects which work within water, but do not meet the “not likely to adversely affect” category for instream work will result in an “adversely affect” to listed fish.
3. Clearing, Grading, and Filling may affect and is likely to adversely affect listed fish when:
 - Project is within ESU/DPS and does not fully implement TESC/SSP (including spill control) and is within a subbasin that provides potential habitat for listed fish species.

d. Beneficial Effect

Projects will have a beneficial effect when the stormwater treatment is:

- Treatment + detention for an existing impervious area that is a greater than 40% (new impervious area) within the project limits.

24.8 Section 106 Process

Any project, activity, or program funded in whole or in part, under the direct or indirect jurisdiction of a federal agency, including those carried out on behalf of a federal agency; and those actions requiring a federal permit, license, or approval, are considered to be an undertaking and are, thus, subject to the requirements detailed in Section 106 of the National Historic Preservation Act of 1966.

FHWA must fulfill its responsibilities under Section 106 of the NHPA, prior to the approval of NEPA. In turn, NEPA approval (Documented Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD)) is required, by FHWA regulation, prior to FHWA approval of funding for right of way acquisition or construction. In order to sign a final Environmental Impact Statement (EIS) or final Environmental Assessment (EA), the FHWA Transportation and Environmental Engineer will need to verify that the document includes the results of the consultation requirements under the NHPA. In order to complete the NEPA process by signing a ROD, FONSI, or Documented CE the FHWA Transportation and Environmental Engineer will need to verify that the requirements above have been met, including completion of coordination with State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO), and, if necessary, the Advisory Council on Historic Preservation (ACHP).

Due to the requirements of agencies to meet their responsibilities under the NHPA, the following sections are the interim procedures. These procedures are continually being reviewed and revised which will result in updates by WSDOT Headquarters the Highways and Local Programs.

.81 Identification of Historic Properties. The agency must coordinate with the SHPO/THPO to:

- determine the area of potential effects (APE).
- review existing information on historic properties within the APE.
- seek information, as appropriate, from tribal organizations, Native Hawaiian organizations, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties within the APE.

The local agency must submit a letter containing the following information to the Regional Local Programs Office:

- Description of the project.
- Location of the project, including legal description.
- Age of any structures present, if applicable (i.e., bridges, buildings, etc.).
- Maps and photos.
- A list of Tribes that should be included as potential consulting parties (see Appendix 24.109 for assistance).

The Region Local Programs Office will transmit the letter to WSDOT Headquarters Highways and Local Programs. Upon receipt of the documentation and review, WSDOT Headquarters Highways and Local Programs will transmit the letter to the SHPO and THPO(s), or Tribal cultural resource contact(s), requesting comments or information such as in identifying historic properties within the area of potential effects. WSDOT Headquarters Highways and Local Programs will also transmit a copy of the letter to FHWA. The local agency should include sufficient copies of the documentation, so as to provide two (2) copies each to each identified Tribal government, as well as a copy for the WSDOT Cultural Resource Specialist. If a response from a tribe is not received within thirty (30) days after the delivery date of the initiation of consultation letter, project development will be allowed to move forward. The tribes do have the option, however, of entering consultation at a later date.

The local agency and the Region Local Programs Office will assume the lead in conducting Section 106 consultation with the tribal governments, after WSDOT Headquarters Highways and Local Programs has initiated the consultation process with the written request. FHWA will be available, however, to participate in Section 106 consultation with a tribe to the extent necessary, to ensure the tribe's meaningful participation in the process.

In addition to these requests, a local agency may also be required to search through the physical records located at the Office of Archaeology and Historic Preservation (OAHP) for identification of eligible historic properties and archaeological sites, if the project does not fall into one of the categories listed in Section 24.82 (a).

.82 Project Evaluation. Section 106 of the NHPA requires that any federal aid project must be evaluated to determine its effects on historic properties. The information from Section 24.81 will assist the agency in completing a project evaluation. The evaluation is a guide to assess the project's impacts to historic properties.

Depending upon the evaluation and the extent of the project's impacts, the effect determination (Section 24.83) will be one of the following conclusions:

- No historic properties affected.
- Finding of no adverse effect.
- Adverse effect.

The agency will detail the impacts of the project through either:

- a. "No historic properties affected" report. Typical items to include in the report are:
 - Description of undertaking.
 - Description of APE, including photographs, maps, drawings, as necessary.
 - Description of steps taken to identify historic properties.
 - Justification for determination of no historic properties present or affected.

The following list identifies those undertakings that have limited areas of impact which are unlikely to contain properties listed or eligible for inclusion in the National Register of Historic Places. These projects can be considered to have no effect on historic properties. If your project falls under one of the below categories, the local agency is not required to consult with SHPO or with the tribes on the APE and the impacts of the undertaking, as outlined in Section 24.81. Although consultation with the tribes will not be initiated, a monthly general notice will be sent to the tribes informing them of which projects met the programmatic exemptions.

- A. All work to be done on bridges of the National Highway System (NHS) and non-NHS state highways which are less than 40 years old, unless an inventory has shown the bridge to be exceptionally significant.
- B. All work within interchanges and within medians of divided highways unless the median has been undisturbed by construction.

- C. All work between a highway and an adjacent frontage road, unless the area between is undisturbed.
 - D. Replacement or extension of culverts and other drainage structures with waterway openings of 100 square feet (9.3 square meters) or less and which *do not* extend beyond previous construction limits.
 - E. Roadway surface replacement, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking where there will be no expansion of wearing surface, unless within a historic district.
 - F. Installation of new lighting, signals, and other traffic control devices, and replacement or repair of lighting, signals, and traffic control devices where the existing units were installed less than 50 years ago, except if the project is immediately adjacent to, or located within, eligible bridges, historic properties, or historic districts.
 - G. Installation, replacement, or repair of safety appurtenances such as guardrails, barriers, glare screens, and energy attenuators (except on National Register listed or previously determined eligible bridges, properties, or districts).
 - H. Fencing, including salvage yards, provided no grading or other landscaping is involved.
 - I. Landscaping on fillslopes and backslopes only. All landscaping beyond toe of fillslopes or beyond top of backslope must be reviewed.
 - J. Repair or replacement in kind of curb and gutter, sidewalk and catch basins on the same location except the following: Replacement projects and construction of handicapped access ramps projects adjacent to National Register eligible or listed properties.
 - K. Railway crossing signs and signal installation or modification and surface improvement.
 - L. Emergency structural repairs to maintain the structural integrity of a bridge (except National Register listed or eligible bridges), roadway overlays, and painting. Bridge reconstruction which does not include roadway widening or modification of existing piers and abutments, but which may include bridge repairs, deck replacement or repair, railing repair and other maintenance work.
 - M. Construction of turning lanes and pockets, auxiliary lanes (e.g., truck climbing, acceleration and deceleration lanes) and shoulder widening where only placement of fill material is involved, or within an area previously disturbed by vertical and horizontal construction activities.
 - N. Placement of fill material on the side slopes of intersection crossroads and accesses for purposes of flattening these slopes to meet safety criteria, provided that no topsoil is removed beyond the area of previous horizontal and vertical disturbance.
 - O. Hazardous waste removal and disposal from within an area previously disturbed by vertical and horizontal construction activities, which constitutes a public hazard and which requires immediate removal.
 - P. Placement of riprap within an area previously disturbed by vertical and horizontal construction activities, to prevent erosion of waterways and bridge piers.
 - Q. Routine roadway, roadside, and drainage system maintenance activities necessary to preserve existing infrastructure and maintain roadway safety, drainage conveyance, and stormwater treatment in previously disturbed areas.
- If the local agency determines that their project is included in one of the types of exempted activities listed above, the local agency must document this determination in Part 4, Question 3 of the Environmental Classification Summary.
- b. “No adverse effect” and “Adverse effect” reports. Typical items to include in the report are:
 - Description of undertaking.
 - Description of APE, including photographs, maps, drawings, as necessary.
 - Description of steps taken to identify historic properties.
 - Description of the affected historic properties.
 - Description of the undertaking’s effects on historic properties.
 - Justification for why the criteria of adverse effect were found applicable or inapplicable; including any conditions or future actions to avoid, minimize, or mitigate adverse effects.
 - Copies or summaries of any views expressed by consulting parties or public comment.
- Projects which involve the excavation of previously undisturbed areas or require the acquisition of new right of way have the potential to uncover archaeological or historical resources. Under these conditions, an archaeological survey must be considered. For information on archaeological surveys, contact the Regional Local Programs Engineer.

- c. Historic Bridge Inventory. The Department uses a Historic Bridge Inventory to determine the eligibility of bridges for the National Register of Historic Places. All bridges considered not eligible for the National Register by this inventory will not require further evaluation unless requested by the WSDOT Cultural Resources Specialist. Some bridges within the Historic Bridge Inventory, known as Category II Bridges, have been identified as being noteworthy but not eligible for the National Register. Should the project involve one of these bridges the Department will consult with SHPO in case the bridge can be marketed. In the event a Category II Bridge cannot be sold, large format black and white archivally processed photographs of the bridge(s) will be taken before demolition or rehabilitation and be provided to the SHPO.

.83 Effect Determinations. If a federal aid project is in an area where historic properties are present, the NHPA requires that FHWA make a determination of effect of the project on those properties. FHWA must make this determination of effect in consultation with SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to the identified properties.

- a. No historic properties affected. This is the appropriate conclusion if the project has no impact on any historic properties or if there are no historic properties present.

If the local agency determines that the undertaking fits within one of the categories listed in Section 24.82 (a), the local agency must document this in the Environmental Classification Summary's Section 4, Part 3.

If the undertaking does not fall under one of the categories listed in Section 24.82 (a), but the local agency determines that either no historic properties are present or there are historic properties present but the undertaking will have no effect upon the properties, the local agency shall provide documentation of this finding, including the information outlined in Section 24.82 (a), to the Regional Local Programs office. The Regional Local Programs office will forward the documentation to the Highways and Local Programs Service Center. Upon receipt of documentation and review, the Highways and Local Programs Service Center will transmit the documentation to SHPO/THPO. The local agency shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

The documentation for the no historic properties affected determination, may be included with the documentation sent to SHPO/THPO for the identification of the APE.

If the SHPO/THPO does not object to the agency's findings within 30 working days of receipt of an adequately documented finding, the local agency has fulfilled their responsibilities under Section 106.

Once concurrence has been obtained from SHPO/THPO or the 30 day period has lapsed, the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorize the right of way or construction phase of a project.

- b. No adverse affects. This conclusion is appropriate when historic properties are present and an undertaking may affect historic properties, but the impacts of the project do not fulfill the criteria for an adverse effect (as outlined in Section 24.83 (c)).

The local agency, after consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria for an adverse effect, or the undertaking is modified or conditions are imposed by the SHPO/THPO to prevent an adverse effect on historic properties. If the local agency proposes a finding of no adverse effect, the local agency must notify the Regional Local Programs office and all other consulting parties by providing them with the documentation specified in Section 24.82 (b). The Regional Local Programs office will forward the documentation to the WSDOT Headquarters Highways and Local Programs. Upon receipt of documentation and review, the Highways and Local Programs Service Center transmits the documentation to SHPO/THPO for review. The SHPO/THPO shall have 30 days from receipt to review the finding.

The local agency may proceed forward with the undertaking if the SHPO/THPO agrees with the no adverse effect finding or if the 30 days lapse without a response. Failure of the SHPO/THPO to respond within 30 days of receipt of the finding shall be considered agreement of the SHPO/THPO with the finding. With SHPO/THPO concurrence, the local agency must maintain a record of the finding and provide information on the finding to the public on request. Implementation of the undertaking in accordance with the finding as documented, fulfills the local agency's responsibilities under Section 106 of the NHPA.

Disagreement with the finding. If the SHPO/THPO or any consulting party disagrees with the local agency's finding, within the 30 day review period, it shall specify the reasons for disagreeing with the finding. The local agency shall either consult with the party to resolve the disagreement or may request the ACHP, through FHWA, to review the finding.

If a finding is submitted to the ACHP, the local agency must provide all documentation as detailed in Section 24.82 (b). The ACHP shall review the finding and notify the local agency of its determination within 15 days of receiving the documented finding from the local agency. The ACHP shall specify the basis for its determination. The local agency must proceed in accordance with the ACHP's determination. If the ACHP does not respond within 15 days of receipt of the finding, the local agency may assume concurrence with their findings and proceed accordingly.

The local agency should seek the concurrence of any Indian tribe and Native Hawaiian organization that has made known to the local agency that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribes or Native Hawaiian organizations disagree with the finding, it may, within the 30 day review period, specify the reasons for disagreeing with the finding and request the ACHP review the finding.

Upon completion of the concurrence process or the lapse of the 30 day review period, the Highways and Local Programs Service Center sends the concurrence letter to FHWA, and the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorizes funding for the right of way or construction phase of the project.

- c. Adverse effects. This conclusion is appropriate when the project has an effect on the historic properties present. An adverse effect is appropriate when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

Adverse effects on historic properties include, but are not limited to:

- physical destruction of or damage to all or part of the property.
- alteration of a property, including restoration, rehabilitation, repair, maintenance, etc., that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR Part 68) and applicable guidelines.
- removal of the property from its historic location.
- change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance.
- introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features.

If an adverse effect is determined, the local agency must document its findings as outlined in [Section 24.82 \(b\)](#). The local agency, Highways and Local Programs and FHWA, must consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.

The local agency will transmit their findings to the Regional Local Programs Office. The Regional Local Programs Office will transmit the documentation to the Highways and Local Programs Service Center, which will transmit the documentation to FHWA. FHWA will notify the ACHP of the adverse affect finding by providing the documentation specified in [Section 24.82 \(b\)](#). The notice shall invite the ACHP to participate when the FHWA desires Council participation; the undertaking has an adverse effect upon a National Historic Landmark; or a programmatic agreement under Section 800.14 (b) of 36 CFR Part 800 will be prepared. The ACHP shall advise FHWA and all other consulting parties whether it will participate within 15 days of receipt of notice.

The local agency will provide the Regional Local Programs office and all consulting parties, the documentation detailing its finding, and will also make this information available for public comment. The Regional Local Programs office will send the documentation to the Highways and Local Programs Service Center. Upon receipt of documentation and review, the Highways and Local Programs Service Center will transmit the documentation to SHPO/THPO for review. The local agency, Highways and Local Programs, and FHWA must consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects. If the local agency, Highways and Local Programs, FHWA, and the SHPO/THPO agree on how the adverse effects will be resolved, all parties will execute a Memorandum of Agreement (MOA). The FHWA will submit a copy of the executed MOA to the ACHP, prior to approving the project, in order to fulfill the requirements of Section 106.

Upon execution of the MOA, the consultation process is completed. A Section 4(f) will then be required as outlined in [Chapter 24.37 \(d\)](#) and [24.39 \(c\)](#). When the Section 4(f) Evaluation has been completed, reviewed, and signed, FHWA can approve the environmental documentation and authorize participation of federal funds.

If agreement between the local agency, Highways and Local Programs, FHWA, and SHPO/THPO, as well as other consulting parties, cannot be reached, FHWA cannot approve the environmental documentation and will not approve participation with federal aid funds. Federal aid funds cannot be used to build the project.

24.9 Project Reviews

.91 References.

- a. NEPA Section 1505.2 and 1505.3.
- b. 23 CFR 771.109(b).

.92 Definition. Project reviews are procedures for monitoring project development to ensure that environmental commitments are kept and adverse impacts mitigated. Reviews are conducted periodically by responsible local agency or monitoring agency officials throughout the various stages of project development and subsequent maintenance.

.93 Procedures.

- a. The local agency ensures that decisions recorded in environmental documents are accomplished in design and construction of projects and maintained or improved upon during the life of the project.
- b. The local agency continues to maintain the project environmental commitment file which follows the project through design, right-of-way acquisition, PS&E, construction, and maintenance.
- c. During construction, the local agency implements and monitors the adopted impact mitigation measures to ensure that they are satisfactorily maintained or improved upon.
- d. When unique or unusual mitigation is required, the local agency conducts periodic reviews during construction or maintenance to evaluate the effectiveness of mitigation measures that were incorporated into the construction contract.
- e. The local agency must request concurrence from the Regional Highways and Local Programs Engineer for any significant alterations to mitigation measures agreed to during the environmental process, even when changes are made during construction or maintenance.
- f. The local agency makes available progress reports and any results of the impact mitigation measures at the request of the public or agencies.

.94 Commitment File. As an initial part of project development, the local agency establishes a project commitment file. Establishment of this file generally coincides with preparation of the environmental document or could be at later stages as required. The file consists of proposed mitigating measures, commitments made to resource or other agencies with permitting authority, and other commitments made on the project. The file normally consists of design and environmental commitments. Other commitments may be added at the local agency's discretion, such as right-of-way, access, maintenance, permits, and agreements.

The local agency continues to maintain the commitment file as a project progresses through its development process. Whenever commitments are made, they are incorporated into project documents and transferred from one phase of the project to the next. Commitments are normally included or identified in the following documents or actions:

- a. Environmental documents.
- b. Design reports.
- c. Right-of-way plans.
- d. Access plans.
- e. Findings and order.
- f. Contract plans.
- g. Preconstruction conference.
- h. Change orders.
- i. End of project report.
- j. Maintenance.

To organize and track commitments made during the development and implementation of a project, a "Record of Commitment," DOT Form 220-021, or similar form may be used.

When a commitment is made, record it on the Record of Commitment form. The form contains the detail necessary to document the commitment, including references to correspondence, agreement numbers, etc.

A commitment may be revised when all parties involved agree to the revision.

Records (forms) on completed commitments should be retained for at least a year after the completion date. Commitments requiring ongoing maintenance need to be retained in the files as long as the commitment is active.

24.10 Appendixes

[24.101 Instructions for Completing the Environmental Classification Summary](#)

[24.102 Biological Assessment Coordination Process](#)

[24.103 ESA Species Listings Requests — Agency Contacts](#)

[24.104 ESA Species Listings Request Letter Template](#)

[24.105 "No Effects" BA Letter Template](#)

[24.106 "May Affects" BA Template](#)

[24.107 7\(d\) Request Letter Template](#)

[24.108 Definitions](#)

[24.109 27 Tribes and Treaty Ceded Areas of Washington State](#)

[24.110 Local Agency Environmental Classification Summary](#)

The Environmental Classification Summary (ECS) form consists of six parts, five of which must be completed by the Local Agency. The ECS form is part of a Local Agency's NEPA documentation. As such, the form must contain accurate, current information and enough detail to clearly indicate why a requirement is either not applicable or has been clearly considered and satisfactorily resolved.

Throughout these directions, a number of references and links are provided from the Washington State Department of Transportation's Environmental Procedures Manual (EPM), July 2001 edition. This manual should be used as a resource for additional information on an environmental requirement's background and approval process. The following link is for the EPM:

<http://www.wsdot.wa.gov/eesc/environmental/programs/regcomp/ProceduresManual/start.pdf>

A number of the considerations within these directions require early and potentially lengthy timeframes for coordination and eventual approval. Be sure to initiate the individual environmental processes early, in order to include appropriate supporting documentation and approvals with the submittal of the final ECS form.

Part 1 – Project Description

Complete all boxes, if information is known.

WRIA No. & Name – The names and numbers of these areas, along with a map, are located in WAC 173-500-040.

Project Description – Provide a detailed description of the proposed project and associated work items included within the scope of the project.

Part 2 – Environmental Classification

Indicate both the NEPA and SEPA classification for the project, by checking the appropriate boxes. If the project falls under either the NEPA or SEPA CE classification, indicate the CE Type, using the reference provided.

Indicate the name of the staff person who completed the form in the box under the NEPA Approval Signatures section. Be sure to print the name of this individual.

Once FHWA signature has been secured, a copy of the signed page 1 of the ECS will be returned to the Local Agency, via the Regional Local Programs Office. The FHWA signed ECS signifies NEPA approval for the project.

If the project falls under the 1999 CE MOU, the document will not be sent to FHWA for signature. The CE MOU allows WSDOT to approve the ECS. For CE MOU projects, a copy of the signed page 1 will be returned to the local agency, via the Regional Local Programs Office, after WSDOT signature has been secured and OSC Local Programs' review.

For a copy of the 1999 CE MOU, click on the following link: <http://www.fhwa.dot.gov/wadiv/ProgCEMOU.pdf>

Part 3 – Permits and Approvals Required

Indicate the permits and approvals required for the project, by checking either the "yes" or "no" box for each particular permit.

Refer to the EPM for questions regarding specific permits and subsequent applicability to the project.

Part 4 – Environmental Considerations

Address all fifteen (15) items. In some instances, it may be appropriate to indicate that the consideration is "not applicable". If this is the case, include a sentence or two explaining why the consideration is not applicable.

Air Quality

Federal, state and local regulations require that all projects be reviewed for potential impacts to air quality. All transportation projects requesting federal funding must be analyzed for regional air quality emissions. This regional analysis is usually conducted by the local metropolitan planning organization (MPO) or regional transportation planning organization (RTPO). Additional regional analysis may be necessary depending upon the nature of the project. *(Additional information on Air Quality considerations and applicable regulations can be found in Section 425 of the EPM.)*

On the ECS form, indicate whether the project is included in your area's metropolitan transportation plan. If "yes", indicate the date the plan was approved.

Indicate whether your project is located in an air quality non-attainment or maintenance area. The following link provides a map indicating the locations of all of the non-attainment and maintenance areas within the state of Washington:

http://www.ecy.wa.gov/programs/air/other/namaps/Web_Map_Intro.htm#Particulate%20Matter

Indicate whether the project is exempt from air quality conformity requirements. If “yes”, note the exemption. Refer to 40 CFR 93.126 and WAC 173-420-120, for the list of project types exempt from regional analysis. (*Section 425 of the EPM also provides a list of exempt project types.*)

If applicable, attach air quality study and hot-spot analyses performed for the project.

Critical/Sensitive Areas

- a) Water quality and other surface water issues must be addressed during the development of a project. Given the importance of groundwater resources, like sole source aquifers, wellhead protection areas, and Critical Aquifer Recharge Areas (CARAs), consideration must be given to the potential impacts a project might have on these resources.

Indicate whether the project is located within an aquifer recharge area, wellhead protection area or sole source aquifer area. The enclosed link provides a map, which notes the locations of all of the sole source aquifers located within the state of Washington:

<http://www.epa.gov/r10earth/maps/ssarx.html>

If the project is located within a sole source aquifer area, indicate whether the project is exempt from the Environmental Protection Agency’s (EPA) review and approval. Projects considered exempt from EPA review and approval include: resurfacing; lighting; signing; pavement marking; guardrail; signalization; freeway surveillance and control system; railroad protective devices; glare screening; median barriers; energy attenuators; and the temporary replacement of highway facilities damaged by natural disasters or catastrophic failures. All other types of projects must be submitted to EPA for review and approval. (*Additional information on Sole Source Aquifer considerations can be found in Section 433 of the EPM.*)

If the project is located within a sole source aquifer and is not exempt, attach the concurrence letter received from EPA.

- b) Describe any geologically hazardous areas located within the project area.
- c) Describe general habitat located within the project area and known fish and wildlife species present within and around the project area.
- d) Indicate whether the project is located within any wetlands.

If the project is located within any wetlands, identify the estimated area of impact to wetlands in acre(s). Also describe coordination that has occurred with the Washington State Dept. of Ecology and the U.S. Army Corps of Engineers to mitigate for the impacts. Attach a copy of the mitigation plan.

Cultural Resources/Historic Structures

Both NEPA in general and, more specifically, Section 106 of the National Historic Preservation Act of 1966, require federal agencies to take into account the effects of a project on properties included in or eligible for inclusion in the National Register of Historic Places. This process is designed to identify potential conflicts between preservation concerns and transportation needs and resolve such conflicts through consultation with the Office of Archaeology and Historic Preservation, affected Tribes, and any other interested consulting parties.

Indicate whether the project fits one of the exempt activities listed in Section 24.82(a) of the LAG manual. If “yes”, list the exemption.

If “no”, indicate the dates of OAHP consultation, Tribal consultation (if applicable). Also indicate whether the project will result in an adverse affect to any cultural and/or historic resources. If “yes”, indicate the MOA date of approval. (*Additional information on Cultural/Historic Resources considerations can be found in Section 456 of the EPM.*)

Attach a copy of the cultural resources survey; all correspondence with OAHP and Tribes, including consultation letters; and a copy of the signed MOA, as appropriate.

Flood Plains or Ways

Indicate whether the project is located within a 100-year flood plain. If “yes”, indicate whether the project is located in a 100-year floodway.

Indicate whether the project will impact a 100-year flood plain. If “yes”, describe the impacts and analyses conducted. If the impacts have been identified as significant, indicate coordination undertaken and resolution. (*Additional information on Flood Plains consideration can be found in Section 432 of the EPM.*)

Attach any analyses conducted.

Hazardous and Problem Waste

Stringent federal and state environmental laws and regulations dictate an agency's full responsibility for cleanup and proper disposal of hazardous materials.

Indicate whether the project is likely to involve site clean-up. If "yes", describe proposed plan and coordination undertaken. Attach a copy of proposed plan and approvals.

Indicate whether the project will create any hazardous waste. If "yes", describe proposed plan to handle and dispose of waste. Attach a copy of proposed plan and approvals. (*Additional information on Hazardous Materials considerations can be found in Section 447 of the EPM.*)

Noise

A traffic noise analysis is required by law for federally funded projects and required by state policy for other funded projects that: 1) involve construction of new highway; 2) significantly changes the horizontal or vertical alignment of an existing highway; or 3) increases the number of through traffic lanes on an existing highway.

Identify and describe any potential noise receptors within the project area and subsequent impacts to those noise receptors. If impacts are identified, describe significance and proposed mitigation measures. Attach a copy of noise study, if applicable. (*Additional information on Noise considerations can be found in Section 446 of the EPM.*)

Parks, Recreation Areas, Wildlife Refuges, Historic Properties or Scenic Byways, 4(f)/6(f) Lands

Identify and describe any 4(f) and/or 6(f) lands located within or adjacent to the project area.

Under Section 4(f) of the 1966 Department of Transportation Act, the FHWA and other USDOT agencies cannot approve the use of land from a publicly owned park, recreation area, or wildlife and waterfowl refuge, or any significant historic site, unless a determination is made that:

- 1) There is no feasible and prudent alternative to using the property; and
- 2) The proposed action includes all possible planning to minimize harm to the property resulting from such use.

If a 4(f) property is present, identify the property and describe the impacts to the 4(f) resource. If impacts are identified, the severity of the impacts and type of 4(f) resource will dictate whether a programmatic 4(f) document or an individual 4(f) document must be prepared. Copies of the programmatic 4(f) agreements available – describing conditions to be met and subsequent documentation requirements – can be found within *Section 455 of the EPM* or at the following link:

<http://www.fhwa.dot.gov/environment/guidebook/chapters/v2ch15.htm>

If the project's impacts to 4(f) resources are not programmatic, an individual 4(f) document must be prepared. Guidance on the format and content of the individual 4(f) document can be found in *Section 455 of the EPM* or at the following link:

<http://www.fhwa.dot.gov/environment/guidebook/vol2/doc15d.pdf>

If impacts to 4(f) resources are identified, attach a copy of the approved programmatic or individual 4(f) document.

Section 6(f) applies to all projects that impact recreational lands purchased or improved with land and water conservation funds. The Secretary of the Interior must approve any conversion of property acquired or developed with assistance under this act to other than public, outdoor recreation use. If a 6(f) property is present and impacts will occur, attach a copy of the Secretary of the Interior's approval. (*Additional information on Section 6(f) considerations can be found in Section 455 of the EPM.*)

Resource Lands

Identify any of the following resource lands located within 300 feet of the project limits or those that will be otherwise impacted by the project.

- a) Identify whether any agricultural land is present. If "yes", is the resource considered to be prime and unique farmland? Farmlands that are defined as "prime", "unique" or of state or local significance are protected by federal and state legislation.

Prime farmland is defined as land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides and labor, and without intolerable soil erosion. Prime farmland includes land that possesses the above characteristics and may include land currently used as cropland, pastureland, rangeland, or forestland. It does not include land already in or committed to urban development or water storage.

Unique farmland is defined as land other than prime farmland that is used for production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Example of such crops include lentils, nuts, annual cropped white wheat, cranberries, fruits, and vegetables.

If the project will result in the conversion of prime or unique farmland, the project must be evaluated to determine if it fits under one of the following exemptions:

- Construction within existing rights of way purchased before August 6, 1984.
- All resurfacing and normal road repairs.
- Rights of way taken from existing residents and/or businesses.
- Borrow areas and disposal sites not arranged for under the direction of WSDOT.
- Land committed to water storage.

If the project will result in the conversion of prime or unique farmland and is not exempt, the Local Agency must complete Parts I and III of Form AD 1006 and submit a copy of for review to the Natural Resources Conservation Service (NRCS) Office. (*Additional information on Farmlands considerations can be found in Section 454 of the EPM.*) A copy of Form AD 1006 is enclosed below:

ftp://npssftp.ftw.nrcs.usda.gov/ftp/forms_r2/AD/AD1006.pdf

And a list of the NRCS Offices is available via the following link:

http://oip.usda.gov/scripts/ndisapi.dll/oip_agency/index?state=wa&agency=nrcs

Attach a copy of the NRCS approved Form AD 1006, if applicable.

- b) Identify any forest/timber lands present within the project area and impacts.
- c) Identify any mineral deposits present within the project area and impacts.

Rivers, Streams (Continuous, Intermittent), or Tidal Waters

- a) Identify all waterbodies within 300 feet of the project limits or any waterbodies that will otherwise be impacted by the project. If waterbodies are present, identify the Fisheries WA Stream Number, if available, and if the waterbody is on Ecology's 303(d) Report. If the waterbody is on Ecology's 303(d) Report, include the reasons for listing and date of report. The enclosed link provides Ecology's 303(d) List of Impaired and Threatened Waterbodies:

<http://www.ecy.wa.gov/programs/wq/303d/index.html>

If a river is present within the project area, determine and note whether the river has been designated as a federal Wild and Scenic River or as part of Washington's Scenic River System. Federal and state legislation protects the wild and scenic values of certain rivers. Transportation projects that may adversely affect a wild and scenic river are encouraged to coordinate early with local, state, and/or federal agencies responsible for a designated wild and scenic river.

Although no specific permits are required for impacting a wild and scenic river, attach documentation that will illustrate the coordination that occurred with responsible officials to identify and study impacts, identify possible mitigation, and select an alternative.

Federally designated Wild and Scenic Rivers within the state of Washington are:

- Skagit River and all tributaries upstream of the pipeline crossing at Sedro Wooley
- Klickitat River from Wheeler Creek to the confluence with the Columbia River
- White Salmon River from the confluence of Gilmer Creek (near the town of BZ Corner) to the confluence with Buck Creek

Federally designated Study Rivers within the state of Washington are: (Study Rivers are areas being studied to determine if they qualify for designation.)

- Klickitat River upstream of the confluence of the Little Klickitat River to the Yakima Indian Reservation boundary
- White Salmon River upstream of the confluence with Gilmer Creek

Responsible agencies are:

- State Parks and Recreation Commission – manage all state scenic rivers. Local agencies also administer State Scenic Rivers through their Shoreline Management Plans.
- National Park Service, Recreation Programs – manage all rivers on the Nationwide Rivers Inventory.
- Mt. Baker-Snoqualmie National Forest, Mt. Baker Ranger District office – manages the Skagit Wild and Scenic River.
- Columbia River Gorge Commission – manages the Klickitat and White Salmon Wild and Scenic Rivers.

Additional information on wild and scenic rivers within the state of Washington can be found at the following link:

<http://www.nps.gov/rivers/wildriverslist.html#wa>

Section 453 in the EPM provides additional information on designated rivers within the state of Washington and guidance on ensuring appropriate consideration of impacts to wild and scenic rivers.

- b) Identify any stream crossing structures by type.

Tribal Lands

Identify any Tribal lands located within the project area or that will otherwise be impacted by the project. The enclosed link provides a map identifying the location of federally recognized Tribal land within the state of Washington:

<http://www.goia.wa.gov/directory/pdf/TRIBAL%20LOCATIONS.pdf>

If Tribal lands are present or will be otherwise be impacted by the project, describe the coordination efforts that have occurred with the Tribe(s).

Visual Quality

Identify whether the project will impact roadside classification or visual aspects. If “yes”, identify the impacts and their level of significance.

Water Quality/Stormwater

Respond to the questions listed and include as description on the proposed water quality/quantity treatment for new and any existing impervious surface in the space provided.

Ensure project is in adherence to local requirements; state Dept. of Ecology requirements; and adheres to the requirements of the Federal Endangered Species Act. Compliance with one agency doesn’t necessarily guarantee adherence to another agency’s requirements (e.g., DOE’s manual provides opportunities for treatment exemptions that ESA does not recognize).

Previous Environmental Commitments

Identify whether any previous environmental commitments have been made within the project area. If “yes”, describe the commitments, whether they were the result of a permit, identify the agency issuing the permit, date issued, and how the commitments will be met, within the space provided.

Long Term Maintenance Commitments

Identify whether any long-term maintenance commitments are necessary for the project. If “yes”, describe the commitments and how they will be met, within the space provided.

Environmental Justice

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (2/11/94), requires all federal agencies, to the extent allowed by law, to administer and implement its programs, policies and activities that affect human health or the environment so as to identify and avoid “disproportionately high and adverse” effects on minority and low-income populations.

The Executive Order is available online at:

<http://www.fhwa.dot.gov/environment/ejustice/facts/index.htm#legislation>

Projects must be evaluated for disproportionate impacts to minority and low-income populations. If the potential for impacts to minority and low-income populations is present, attach documentation that will illustrate the impacts were identified and evaluated to determine if they are disproportionate; coordination that occurred; the opportunities provided for community input; and mitigation measures.

Part 5 Biological Assessment and EFH Evaluations

Section 7 of the Endangered Species Act requires each federal agency to ensure its actions to authorize, permit or fund a project do not jeopardize the continued existence of any threatened or endangered species. This section of the Act requires agencies to evaluate the potential impacts their project may have on listed and proposed species, make an effect determination and consult with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS), as appropriate.

Answer all questions within the Part 5 checklist. Use the space provided to further explain/justify any “yes” noted on the checklist. If the number of “yes” responses are too numerous or cannot be explained easily, then a separate biological assessment must be prepared. This does not mean that a NE determination is not the appropriate conclusion; just that it cannot be justified within the checklist.

Check the appropriate ESA effect determination. If a NLTAA or LTAA determination is checked, include the date of concurrence or issuance of BO, as appropriate.

Under the Fishery Conservation and Management Act of 1976 (Magnuson-Stevens Act), NMFS was given legislative authority to regulate the fisheries of the United States. In 1996, this Act was amended to emphasize the sustainability of the nation’s fisheries and create a new habitat conservation approach. This habitat is called Essential Fish Habitat (EFH).

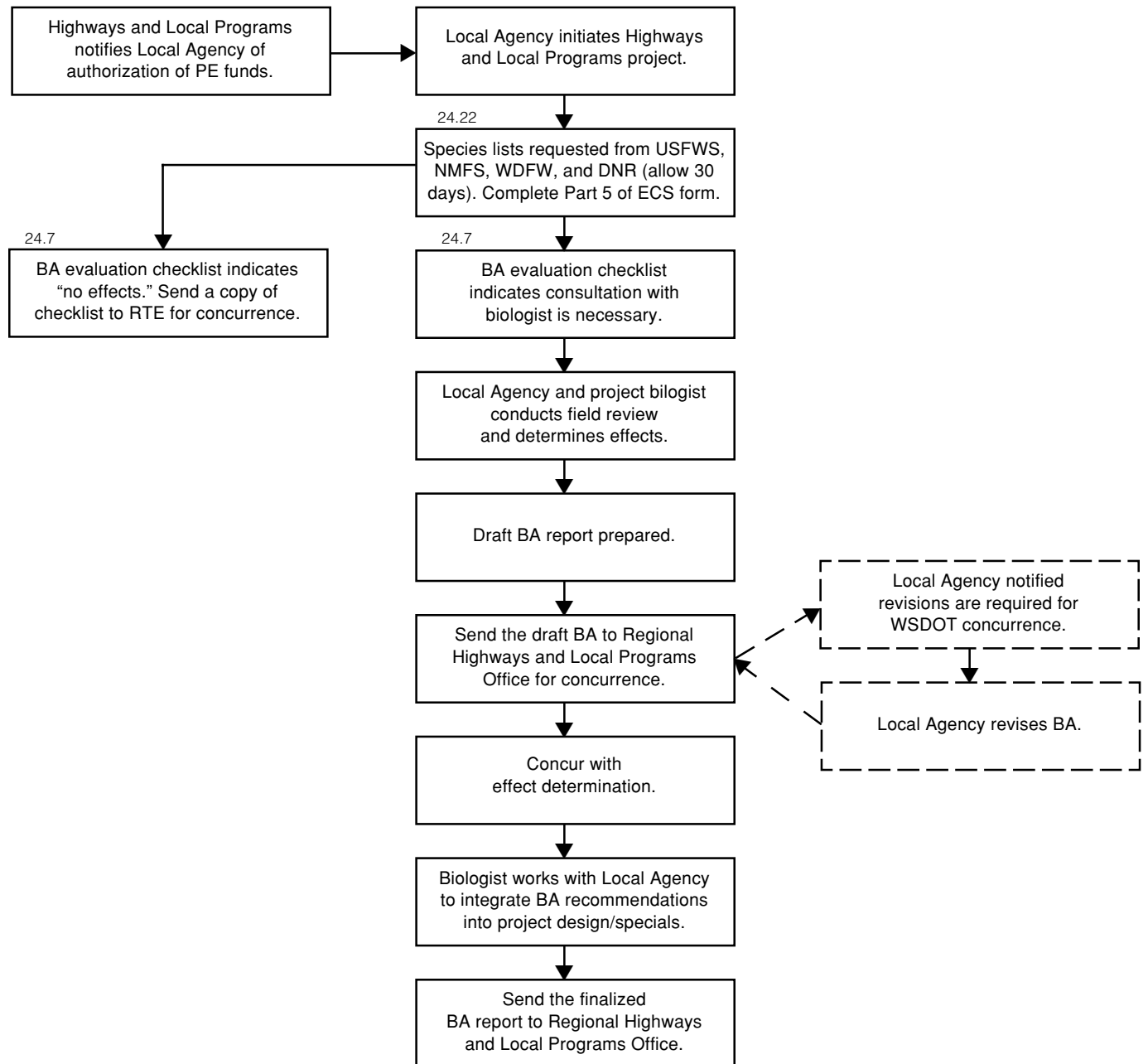
Federal agencies must consult with NMFS on all activities or proposed activities, authorized, funded, or undertaken by the agency that may adversely affect EFH. Additional information on EFH can be found at NMFS homepage:
<http://www.nmfs.noaa.gov/>

Check the appropriate effect determination for Essential Fish Habitat considerations. If an adverse affect determination is made, provide the date of concurrence from NMFS and identify any conservation measures provided by NMFS.

If the Part 5 checklist is not used as the BA documentation, attach copies of the BA and EFH analysis; all correspondence with the NMFS and USFWS; and copies of concurrence letters and BOs, as appropriate.

Part 6 FHWA Comments

Leave this section blank. FHWA will use this section to provide any comments or notes regarding the NEPA approval.



A letter is sent to each of the following agencies requesting information on threatened, endangered, proposed, candidate, and species of concern.

U.S. Fish and Wildlife Service (USFWS)

Agency provides legal listings for terrestrial and freshwater species:

Western Washington:

Supervisor
U.S. Fish and Wildlife Service
510 Desmond Drive SE, Suite 102
Lacey, WA 98503-1273
(360) 753-9440

Eastern Washington:

Supervisor
U.S. Fish and Wildlife Service
Spokane Field Office
11103 E. Montgomery Drive, Suite 2
Spokane, WA 99206
(509) 921-0160

National Marine Fisheries Service (NMFS)

Regional Highways and Local Programs Office provides legal listings for marine species.

Washington State Department of Fish and Wildlife (WDFW)

Agency provides site specific information on species monitored by the state that are documented in the Habitats and Species maps. This is sensitive, confidential information and you will need to sign an agreement to obtain it. Only include the letter from WDFW in the BA. Maps **cannot** be published in any public document. (This is the best information source on the presence of species near your project.) A fee may be associated with this request.

Supervisor
Priority Habitats and Species
Washington State Department
of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091
(360) 902-2543

Washington State Department of Natural Resources (DNR)

Agency provides information on locations of sensitive plants and rare plant communities that are documented in the Natural Heritage Program (NHP) database.

Supervisor
Washington Natural Heritage Program
Division of Forest Resources
Department of Natural Resources
P.O. Box 47016
Olympia, WA 98504-7016
(360) 902-1667

Appendix 24.104 **ESA Species Listings Request Letter Template**

The letter will request all ESA species and habitat listings within your agency's jurisdiction. This information can be used for all projects within the agency's jurisdiction. Updates to these listings, however, must be obtained every six months. This can be done by requesting a complete new listings or submitting a copy of the previous listings and requesting updates. A copy of this letter is submitted to each agency contact in **Appendix 24.103**.

February 3, 1999

ATTN: Resource Agency Contact

RE: Species Listings Within *Local Agency's*
Jurisdiction

Dear Resource Agency Contact:

The *Agency name* is requesting all Endangered Species Act species and habitat listings within our agency's jurisdiction. Our agency understands this information must be updated every six months and the information can be used to evaluate all projects conducted within our jurisdiction. Our agency further understands the species and habitat listings may be updated prior to our six month update request, and it will be our responsibility to ensure that we obtain any updated information.

A map detailing the boundaries of our jurisdiction has been included for your use. If you have any questions, please either e-mail me at agency contact's e-mail address or call me at agency contact's phone number.

Sincerely,

Agency Contact

Enclosures

KEY:

Regular type — recommended wording

Italicized type — fill in with appropriate information**Bold type** — key wording that should remain in letter*Agency Address*

ATTN:

RE: *Project Name*
Federal Aid Project NumberDear *Name of Agency Contact*:

Local Agency name is proposing to *project description*. We are preparing this assessment in response to a listing we received on *date* (FWS Reference #, *if listing is from USFWS, no number if from NMFS*). The listing indicated the potential presence of *listed species*.

The project is located *provide location including street, county, (TRS)*. Proposed work includes *project description*. Construction is planned for *months and year* and will take approximately *amount of time in days* to complete. *Describe any expected noise and disturbance issues generated from the project*.

A field review of the project site was conducted on *date* by *agency biologist*. Land use in the vicinity of the project area consists of *describe land use in terms of available habitat, existing noise disturbances, etc.*

Describe habitat present as it relates to each threatened and endangered species. Address presence of threatened and endangered species in habitat.

Review of the Washington State Department of Fish and Wildlife Habitats and Species maps *include all data bases reviewed or other sources such as local fisheries biologists indicated that provide information found, etc.*

Discuss impacts from construction for each listed species or guild of species (e.g., fish). Write one paragraph per species, include the no effect determinations.

We have determined that *select appropriate justifications, they may include: due to the location, the type of work proposed, time of year work is proposed for, lack of use of the project area, low level of use, the large amount of available habitat in the immediate vicinity of the project, etc.*

Make “no effect” determinations for each listed and proposed species, and impact determinations for candidate species and species of concerns. It is our understanding that this satisfies our responsibilities under Section 7 (c) of the Endangered Species Act at this time, and we are sending you this copy of our assessment for your files. We will continue to remain aware of any change in status of these species and will be prepared to re-evaluate potential project impacts if necessary. To ensure concurrence with these findings, we request that you transmit a letter signifying your agreement with these conclusions. Please call *biologist* if you require any additional information or have any questions about this project.

Sincerely,

Attachments: Vicinity maps and photos

The following pages provide an example of what a detailed biological assessment document for a “may affect” determination may include. Each BA will be dictated by the project and site’s unique and specific characteristics.

KEY:

Regular type — suggested wording

Italicized type — fill in with project specific information

PROJECT NAME
Biological Assessment for *Listed Species*
Federal Aid Project Number

SUMMARY

Provide a one paragraph summary of the project (TSR location), its impacts and the effect determination for each listed species.

INTRODUCTION

An endangered species listing for this project was received from the U.S. Fish and Wildlife Service on *date* (FWS ref. #). The letter indicated that the following species may be present in the vicinity of the project area.

Name	Scientific Name	Federal Status	State Status
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List species here from listing, include species of concern.

An endangered species listing was also received from the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service on *date*. The letter indicated that the following species, *list species*, may occur in the area.

Name	Scientific Name	Federal Status	State Status
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List species here from listing, include species of concern

A field review of the project site was conducted on *date or dates* by an *agency* biologist. The purpose of the site visit was to determine the status of listed and candidate species in the area and to evaluate the potential impacts of the project. Pertinent literature was reviewed, including information received from the Washington State Department of Fish and Wildlife’s Habitats and Species maps and other information sources. *Provide a statement of what the databases indicated and discuss what other information sources, such as local biologists, were contacted.*

SETTING

The project is located in *county*, *TRS information, including vicinity map*. Describe the project setting including local physiographic region, economic or resource conditions, general vegetation, levels of disturbance (e.g., nearby traffic, nearby marina, etc.), etc.

PROJECT DESCRIPTION

Describe the project including discussions on clearing (give specific amount of area), grading, habitat alterations (what, how many feet off of the existing pavement will the project extend to?), tree removal (how many trees, what kinds, diameters, etc.), stream work, blasting, pile driving, sediment causing activities, type of equipment to be used, length of time construction will take, anticipated start and end dates, in water work windows, etc. The time of construction is very important to include. It is impossible to evaluate the impacts of the project on listed species without knowing when the disturbances will occur.

WATER RESOURCES

Describe the significant streams, lakes, rivers, and wetlands in the vicinity of the project and describe the fish habitat features, such as woody debris, riparian quality in the project area. If a body of water is present, describe the watershed, any limiting factors, average temperatures, stream bed composition, existence of pools/riffles/glides, amount of large woody debris, etc.

VEGETATION

Describe the general vegetation in the project area and impacted vegetation. Vegetation descriptions should be general in terms of habitat types rather than lengthy species lists unless listed plants are present. Address potential perch, roost, or nest trees, identify habitat for listed species in the vicinity of the project. Describe existing communities (e.g., undisturbed deciduous forest, disturbed coniferous forest); list dominant vegetation in communities, understory and shrub layers, herbaceous vegetation; list types and average dbh of trees in communities; is any vegetation suitable for nesting or foraging; etc.

SPECIES OF CONCERN

Include one major section for each listed species. Address: general species requirements such as food sources, habitat use, key aspects of habitat (nest, perch, roost trees, migration corridors, rearing areas, etc.), timing when species are most susceptible to disturbances, etc. Focus on the species' use of the project area and vicinity. Provide specific information on habitat in the project area, both the amount and quality, occurrence of species in the area, and the level of use in the area. Include direct observations with dates, WDFW or other records of sightings or use of the area by species in question, any surveys available, and observations made by other biologists such as WDFW biologists.

For fish, address: habitat in terms of whether it is migrating, spawning, rearing, or cover wintering habitat. Discuss run timing, in and out migration of adults and juveniles. (It may help to include a calendar showing the life history of a species by month.) Address riparian vegetation, pool and riffle habitat, water levels, and large woody debris. Temperature and water quality can be discussed in general terms if information is available. This information will be summarized in the impacts table included in the impacts section.

Address each listed species that is incidental to the project (has no point location) such as marbled murrelet flyovers, when no suitable habitat is present in the project vicinity or migrating peregrine falcons or salmon. For each species provide a short summary of their natural history, the availability of habitat in the project area, their expected use of the project area.

DESIGNATED CRITICAL HABITAT

For each designated critical habitat, describe the quality, location, amount, and importance (obtain this from the final ruling) of the critical habitat and the use of the habitat within the project area.

PROPOSED SPECIES OR CRITICAL HABITAT

Treat each proposed species as though it is a listed species. Provide their natural history, the availability of habitat in the project area, and their expected or actual use of the project area.

CANDIDATE SPECIES

For each candidate species, provide a short summary of their natural history, the availability of habitat in the project area, their expected or actual use of the project area.

SPECIES OF CONCERN

For each species of concern, provide a short summary of their natural history, the availability of habitat in the project area, and their expected or actual use of the project area. These species can be lumped by guild; e.g., address all bat species in one paragraph and all lampreys in one paragraph, etc.

POTENTIAL IMPACTS TO LISTED AND PROPOSED SPECIES

Address all impacts from the project, this discussion should consider the project both during construction and after it is in place. For most species, the impacts to be addressed include direct disturbance during construction, impacts to its habitat, and impacts to food resources.

- For disturbances, address all potential noise and activity type impacts; discuss if the project meets the species recovery plan guidance for noise disturbance.
- For impacts to habitat, determine the amount of habitat that will be impacted; determine if the project meets the species recovery plan.
- For impacts to food sources, address the potential impacts and how impacts can be minimized. Examples are impacts to water quality or loss of grazing habitat.
- Address interrelated, interdependent, and cumulative effects.
- Make an effect determination for each threatened, endangered, and proposed species.

POTENTIAL IMPACTS TO CANDIDATE SPECIES AND SPECIES OF CONCERN

Address any potential impacts to these species. Species can be lumped and addressed together if there are similar impacts; e.g., all fish and amphibian species, all bat species, etc. Make an impact assessment, do not make an effect determination for these species.

RECOMMENDATIONS

Provide recommendations to help the project minimize impacts to listed species. These may include the potential of habitat enhancement, use of best management practices, timing restrictions, etc. These recommendations must be included in the project. Normally, NMFS and USFWS require the inclusion of the recommendations in the project as part of the conditions of their concurrence.

Examples:

- Tree removal will occur between October 1 and December 31 to avoid owl and murrelet nesting seasons.
- Construction will occur between August 6 and October 31. Construction may take two years to complete.
- Trail construction shall be completed in the wintertime, when the sensitive species are dormant. Utilize hand tools and labor to construct the trail and avoid removing vegetation wherever possible.

- During vegetation removal, all trees and shrubs shall be felled into the area that will be cleared, and not into the surrounding forested areas or streams to minimize impacts to existing vegetation. All vegetation removed from construction areas must be removed from the site to avoid placing it in sensitive plant areas.
- Limits of clearing shall be flagged or fenced with temporary construction fencing. Trees not to be removed should be flagged or fenced off with temporary fencing.

CONCLUSIONS

Summarize the proposed project, include the listed species near the project and the appropriate conclusion. Make an effect determination for each listed and proposed species, and an impact assessment for the candidate species and species of concern.

REFERENCES

List all cited references.

APPENDICES

Include photos, simple project plans, copies of the listing letters for NMFS, USFWS, WDFW, and DNR.

Date

Region Local Programs Engineer

Agency
Project Name
Federal Aid Project Number

Dear

Attached is the completed BA for the *Local Agency and project name* which has an effect determination of “May Affect, Not Likely to Adversely Affect” for any species or critical habitat within the project’s area. At this time we are requesting Highways and Local Programs and FHWA to review and concur with the BA effect determination so that this project can addendum the 7(d) project list.

With this request, *Local Agency* commits to: meet any and all mitigation requirements determined by NMFS and/or USFWS (to be outlined in their concurrence letters); and maintain continuous coordination with Highways and Local Programs and FHWA until the successful completion of the concurrence process.

Local agency details the time critical aspects of the project to justify the inclusion of the project on the 7(d) list for this construction season.

Sincerely,

Local Agency’s Approving Authority

(Excerpt from 50 CFR 402.02)

Action means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to:

- (a) actions intended to conserve listed species or their habitat;
- (b) the promulgation of regulations;
- (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or
- (d) actions directly or indirectly causing modifications to the land, water, or air.

Biological assessment refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation of potential affects of the action on such species and habitat.

Biological opinion is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Effects of the action refers to the direct and indirect affects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

Formal consultation is a process between the Services and the Federal agency that commences with the Federal agency's written request for consultation under section 7(a)(2) of the Act and concludes with the Service's issuance of the biological opinion under section 7(b)(3) of the Act.

Incidental take refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.

Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.

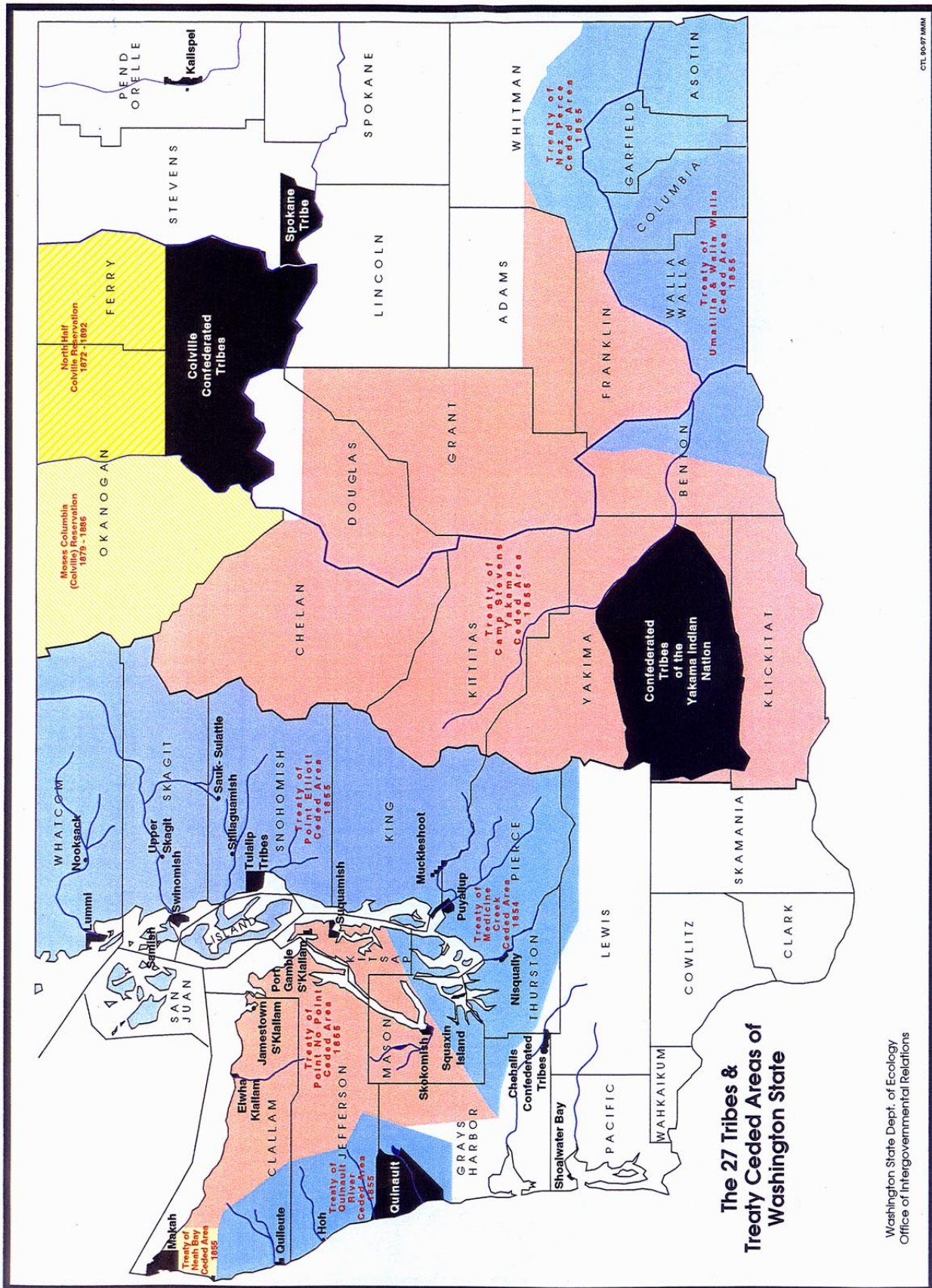
Jeopardize the continued existence of means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

Listed species means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11-17.12.

Proposed species means any species of fish, wildlife, or plant that is proposed in the Federal Register to be listed under section 4 of the Act.

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. (Fish and Wildlife regulations have expanded this definition to include significant alteration or disturbance of habitat.) (From ESA 1973)

27 Tribes and Treaty Ceded Areas of Washington State





Washington State
Department of Transportation

Local Agency Environmental Classification Summary

Part 1 Project Description			
Federal Aid Project Number	Route	Date Created	Local Agency Project Number
Agency		Federal Program Title <input type="checkbox"/> 20.205 <input type="checkbox"/> 20.209 <input type="checkbox"/> Other	
Project Title			
Begin MP _____ KP _____	End MP _____ KP _____	Miles _____ KM _____	Townships _____ Ranges _____ Sections _____
County	Water Resource Inventory Area (WRIA) No. & Name		Within Puget Sound Basin? <input type="checkbox"/> Yes <input type="checkbox"/> No
Project Description			

Part 2 Environmental Classification	
NEPA <input type="checkbox"/> Class I - Environmental Impact Statement (EIS) <input type="checkbox"/> Class II - Categorically Excluded (CE) CE Type (from 23 CFR 771.117) _____ <input type="checkbox"/> Projects Requiring Documentation (Documented CE) (LAG 24.22) <input type="checkbox"/> Class III - Environmental Assessment (EA)	SEPA <input type="checkbox"/> Categorically exempt per WAC 197-11-800 CE Type (from SEPA Checklist) _____ <input type="checkbox"/> Determination of Non-Significance (DNS) <input type="checkbox"/> Environmental Impact Statement (EIS) <input type="checkbox"/> Adoption <input type="checkbox"/> Addendum <input type="checkbox"/> Supplemental

NEPA Approval Signatures

Local Agency Approving Authority

Date

Regional Local Programs Engineer / Assistant Secretary

Date

Federal Highway Administration

Date

Completed By (Print Official's Name)	Telephone (include area code)	Fax (include area code)
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Part 3 Permits and Approvals Required							
Yes	No	Permit or Approval		Yes	No	Permit or Approval	
<input type="checkbox"/>	<input type="checkbox"/>	Corps of Engineers <input type="checkbox"/> Sec. 10 <input type="checkbox"/> Sec. 404		<input type="checkbox"/>	<input type="checkbox"/>	Shoreline Permit	
		<input type="checkbox"/> Nationwide Type _____		<input type="checkbox"/>	<input type="checkbox"/>	State Waste Discharge Permit	
		<input type="checkbox"/> Individual Permit No. _____		<input type="checkbox"/>	<input type="checkbox"/>	Section 4(f)/6(f): Wildlife Refuges, Recreation Areas, Historic Properties	
<input type="checkbox"/>	<input type="checkbox"/>	Coast Guard Permit		<input type="checkbox"/>	<input type="checkbox"/>	SSP and TESC Plans Completed	
<input type="checkbox"/>	<input type="checkbox"/>	Coastal Zone Management Certification		<input type="checkbox"/>	<input type="checkbox"/>	Water Rights Permit	
<input type="checkbox"/>	<input type="checkbox"/>	Critical Area Ordinance (CAO) Permit		<input type="checkbox"/>	<input type="checkbox"/>	Water Quality Certification - Sec. 401 Issued by _____	
<input type="checkbox"/>	<input type="checkbox"/>	ESA and EFH Compliance (See Part 5)		<input type="checkbox"/>	<input type="checkbox"/>	Tribal Permit(s), (If any) _____ _____	
<input type="checkbox"/>	<input type="checkbox"/>	Flood Plain Development Permit					
<input type="checkbox"/>	<input type="checkbox"/>	Forest Practice Act Permit					
<input type="checkbox"/>	<input type="checkbox"/>	Hydraulic Project Approval					
<input type="checkbox"/>	<input type="checkbox"/>	Local Building or Site Development Permits					
<input type="checkbox"/>	<input type="checkbox"/>	Local Clearing and Grading Permit					
<input type="checkbox"/>	<input type="checkbox"/>	Natl. Historic Preservation Act - Section 106		<input type="checkbox"/>	<input type="checkbox"/>	Other Permits, including GMA (List): _____ _____ _____ _____	
<input type="checkbox"/>	<input type="checkbox"/>	National Pollutant Discharge Elimination System (NPDES) Baseline General for Construction					
<input type="checkbox"/>	<input type="checkbox"/>	ROW Acquisition Required					

Part 4 Environmental Considerations	
Will the project involve work in or affect any of the following? Identify proposed mitigation. Attach additional pages or supplemental information if necessary.	
<p>1. Air Quality - Identify any anticipated air quality issues.</p> <p>Is the project included in the Metropolitan Transportation Plan? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, date Metropolitan Transportation Plan was adopted. _____</p> <p>Is the project located in an Air Quality Non-Attainment Area or Maintenance Area (for carbon monoxide, ozone, or PM10)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is the project exempt from Air Quality conformity requirements? <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, identify exemption below.)</p>	
<p>2. Critical/Sensitive Areas - Identify any known Critical or Sensitive Areas as designated by local Growth Management Act ordinances.</p> <p>a. Aquifer Recharge Area, Wellhead Protection Area, or Sole Source Aquifer. If located within a sole source aquifer, is project exempt from EPA approval? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>b. Geologically Hazardous Area</p> <p>c. Habitat. List known fish and wildlife species present and describe general habitat.</p> <p>d. Are wetlands present within the project area? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, estimated area of impact in acre(s): _____</p>	

Part 4 Environmental Considerations - Continued**3. Cultural Resources/Historic Structures** - Identify any historic, archaeological, or cultural resources present with the project's area of potential effects.Does the project fit into any of the exempt types of projects listed in Sect. 24.82(a) of the LAG Manual? ☐ Yes ☐ NoIf **Yes**, note exemption below.If **No**: Date of OAHF consultation _____

Date of Tribal consultation(s) (if applicable) _____

Adverse affects on cultural/historic resources? ☐ Yes ☐ No

If Yes, date of approved Section 106 MOA _____

4. Flood Plains or WaysIs the project located in a 100-year flood plain? ☐ Yes ☐ NoIf yes, is the project located in a 100-year floodway? ☐ Yes ☐ NoWill the project impact a 100-year flood plain? ☐ Yes ☐ No (If Yes, describe impacts and analysis conducted.)**5. Hazardous and Problem Waste** - Identify potential sources and type.Is the project likely to involve site clean-up? ☐ Yes ☐ NoWill the project create any hazardous waste? ☐ Yes ☐ No (If Yes, describe waste handling and disposal.)**6. Noise** - Identify potential sensitive receptors or previous mitigation commitments. Briefly describe your impacts to the sensitive receptor, if present.**7. Parks, Recreation Areas, Wildlife Refuges, Historic Properties, or Scenic Rivers/Byways, 4(f)/6(f) Lands** -

Identify any properties within the project limits and, if any are present, describe impacts to properties present.

Part 4 Environmental Considerations - Continued

8. Resource Lands - Identify any of the following resource lands within 300 feet of the project limits and those otherwise impacted by the project. Describe any impacts to any resource lands identified.

a. Agricultural

If present, is resource considered to be prime and unique farmland?

☐ Yes ☐ No

If Yes, date of approval from US Forest Service, Dept. of Agriculture.

b. Forest/Timber

c. Mineral

9. Rivers, Streams (Continuous, Intermittent), or Tidal Waters

a. Identify all waterbodies within 300 feet of the project limits or that will otherwise be impacted.

Fisheries WA Stream No. _____

Ecology 303d Report No. _____

Reason for 303d listing _____

Date of Report _____

b. Identify stream crossing structures by type.

10. Tribal Lands - Identify.

11. Visual Quality

Will the project impact roadside classification or visual aspects? ☐ Yes ☐ No (If Yes, identify the impacts.)

Part 4 Environmental Considerations - Continued

12. Water Quality/Storm Water

Has NPDES municipal general permit been issued for this WRIA? ☐ Yes ☐ No

Amount of existing impervious surface within project limits: _____

Net new impervious surface to be created as a result of project: _____

Existing water quality/quantity treatment for existing impervious surface? ☐ Yes ☐ No

Describe proposed water quality/quantity treatment for new and any existing impervious surface upon completion of project.

13. Previous Environmental Commitments

Have previous environmental commitments been made in the project area? ☐ Yes ☐ No

Describe commitments. If commitments are a result of permit conditions, identify issuing agency, permit number and date, and how commitments will be met.

14. Long-Term Maintenance Commitments

Are long-term maintenance commitments necessary for this project? ☐ Yes ☐ No

Identify.

15. Environmental Justice

Are minority and/or low income communities impacted by the project? ☐ Yes ☐ No (If Yes, identify the impacts.)

Part 5 Biological Assessment and EFH Evaluations

Answer **ALL** questions. Refer to the Part 5 Biological Assessment Checklist Instructions before completing this section.

Permits

1. Are any of the following environmental permits, as indicated in Part 2, required: HPA, 404 wetlands, or local clearing and grading, shorelines, or permits related to critical or sensitive areas ordinances? ☐ Yes ☐ No

Location

	2. Will any construction work occur within 0.5 miles of any of the following:	3. Does the project involve blasting, pile driving, concrete sawing, rock drilling, or rock scaling activities within 1 mile of any of the following?
Bald eagle nesting territories, winter concentration areas, or bald eagle communal roosts?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Spotted owl management circles or designated critical habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Marbled murrelet nest or occupied stand, or designated critical habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Western snowy plover designated critical habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Federal threatened, endangered, proposed, or candidate plant species locations or documented habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Canada lynx habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Gray wolf habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Grizzly bear habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Brown pelican night roosts?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Woodland caribou habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
A mature coniferous or mixed forest stand?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know

4. Will any construction work occur within 300 feet of Puget Sound, Strait of Juan de Fuca, or the Pacific Ocean? ☐ Yes ☐ No
5. Will any construction work occur within 300 feet of any permanent or intermittent waterbody, **which supports or drains into a listed fish supporting waterbody**? ☐ Yes ☐ No ☐ Don't Know
6. Will any construction work occur within 300 feet of any wetland, pond, or lake that is connected to **any** permanent or intermittent waterbody? ☐ Yes ☐ No ☐ Don't Know
7. Does the action have the potential to directly or indirectly impact designated critical habitat for salmonids (including adjacent riparian zones)? ☐ Yes ☐ No ☐ Don't Know

Stormwater

8. Does the project create **any** new impervious surface area? If yes, go to 8a. ☐ Yes ☐ No
- 8a. Will post-project stormwater treatment infiltrate, with pretreatment, all new impervious surface area; OR will stormwater treatment facility treat 140% times the area of new impervious surface area? ☐ Yes ☐ No ☐ Don't Know

Construction Activities

9. Will any construction waste materials (e.g., asphalt or concrete grindings or byproducts, construction-related chemicals, fill materials, or excavated materials) from the project be disposed of at a location other than a permitted disposal site? ☐ Yes ☐ No ☐ Don't Know
10. Will the project involve any in-water work? ☐ Yes ☐ No ☐ Don't Know
11. Will the project effect the water regime of, or utilize any water from a waterbody, which supports or drains into a listed fish supporting waterbody; or any wetland, pond, or lake? ☐ Yes ☐ No ☐ Don't Know
12. Will construction work occur outside the existing pavement? If Yes, go to 12a. ☐ Yes ☐ No
- 12a. Will construction activities occurring outside the existing pavement involve clearing, grading, filling, or modifications of vegetation or tree cutting? ☐ Yes ☐ No

Determination

If all the above questions were marked No (with the exception of Question 8a.), or if any of the above items were checked Yes or Don't know, but an adequate justification has been provided to support a no effect determination, then check **No Effect**. If any of the above items were checked Yes or Don't Know (with the exception of Question 8a.), a biologist is required to conduct a review and evaluate the project; complete the section 7 consultation process per section 24.7 of the LAG manual. Note: If a biologist is required to conduct a review and evaluate the project, this does not preclude a no effect determination.

- ☐ **No Effect** (The proposed project will have no effect on Federally listed or proposed species, and the proposed project will not result in the destruction or adverse modification of designated or proposed critical habitat).

NMFS USFWS

- ☐ NLTA Date of Concurrence

- ☐ LTAA Date BO Issued

Date of First 6 Mo. Update

Essential Fish Habitat Determination:

- ☐ No Effect

- ☐ Adverse Effect. Date of NMFS Concurrence _____

Analysis for No Effects Determination (Required if any item in Section 5 was checked Yes).

Part 6 FHWA Comments

Use Supplement Sheet if additional space is required to complete this section.